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Attached is the second revision (Change 2) to the Military Personnel Law Manual, issued by this Office in 1978. It includes pertinent Comptroller General decisions issued through September 30, 1980. The new or additional information has been included in the form of reprinted pages which are to be substituted for the pages currently in the various chapters of the Manual while retaining the unchanged pages. The Table of Contents has been completely revised and should be substituted for the existing Table of Contents in its entirety.

To the extent possible we plan to continue revising the Manual annually. Additional copies of the revisions may be requested from:

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Termination of active duty

Restored to active duty--interim civilian earnings-- Army members separated from but later retroactively restored to active duty by administrative record correction action (10 U.S.C. 1552) thereby becomes entitled to retroactive payment of military pay and allowances; and while interim civilian earnings may properly be set off against amounts due members, such civilian earnings are deductible only from net balance due members after set off of their debts to the Government and are not recoupable in excess of the net balance. 56 Comp. Gen. 587 (1977), 57 Comp. Gen. 554 (1978).

Restored to active duty--Reserve pay-- Army members separated from extended active duty, who thereafter earn military pay and allowances as members of Reserve components, but whose records are corrected to reflect continued active duty with no break in service, are liable to repay such interim Reserve pay and allowances. 56 Comp. Gen. 587 (1977).

Restored to active duty--interim military pay and medical care-- When an Army member is found to have been erroneously separated from active duty and is retroactively restored to active duty status under the provision of law authorizing the correction of military records, he thereby becomes entitled to retroactive payment of his interim military active duty pay and allowances, and also to reimbursement of his ascertainable interim medical expenses covering the period when he was deprived of free military medical care. 10 U.S.C. 1552(c) (1976). B-195558, December 14, 1979. See also, B-195129, April 28, 1980.

Restored to active duty--value of commissaries, recreational facilities, etc.-- An Army member involuntarily separated from but later retroactively restored to active duty by administrative record correction action, may not be reimbursed on account of his being deprived of the use of military commissaries, exchanges, and entertainment facilities during the interim period, since the value of the privilege of using those facilities cannot be definitely ascertained and reduced to a sum certain. 10 U.S.C. 1552(c) (1976). B-195558, December 14, 1979.

Restored to active duty--jobhunting expenses--
An Army member's claims for indemnification for jobhunting expenses and compensation for hardships experienced in civilian employment following his erroneous separation from active military service, are claims sounding in tort premised on the wrongful acts of Government agents in causing his severance from military service in contravention of a statute or regulation. Such claims are not payable under 10 U.S.C. 1552(c) incident to a correction of the member's military record retroactively restoring him to active duty. B-195558, December 14, 1979.

Restored to active duty--taxes on interim earnings--An Army member involuntarily separated from but later retroactively restored to active duty through the correction of his military records under 10 U.S.C. 1552, does not under that or other provisions of Federal law thereby become entitled to compensation from Federal funds for State income taxes he paid on his interim civilian earnings. The State tax consequences of a military records correction action under 10 U.S.C. 1552 are matters for consideration by the concerned State authorities. B-195558, December 14, 1979.

Restored to active duty--deduction of interim civilian earnings--If an Army member is involuntarily separated from but later retroactively restored to active duty through the correction of his military records under the authority of 10 U.S.C. 1552, his interim earnings from civilian employment do not thereby become a debt that the member owes to the Government. However, under applicable regulations the gross amount of those interim civilian earnings must be deducted from the retroactive military pay and allowances due to him, as mitigation of the Government's monetary obligations in such circumstances. B-195558, December 14, 1979. See also, B-195129, April 28, 1980.

Restored to active duty--uniform allowances--
If an Army officer is separated from active service but is later retroactively restored to active duty under the statute authorizing

the correction of military records (10 U.S.C. § 1552), he thereby becomes entitled to credit for active duty military backpay covering the period of his nullified separation from service. However, he is not entitled to credit for uniform allowances authorized for officers newly entering on active duty in connection with his actual return to Army service after his records are corrected to show that he had never been separated from active duty. B-195129, April 28, 1980.

Restored active duty--collection of VA payments--

When an Army member is separated from but later retroactively restored to active duty status through administrative military records correction proceedings, and this causes the Veterans Administration (VA) to recompute the VA educational assistance benefits he received during the interim period at reduced "inservice" rates, the member's resulting indebtedness to the VA may properly be collected by setoff of the debt against any military backpay due to him. Any disagreement the member might have concerning the validity or amount of the debt would be a matter for consideration by VA authorities. B-195129, April 28, 1980.

Restored to active duty--Social Security taxes--

The Federal and State tax consequences of military records correction proceedings concluded under 10 U.S.C. § 1552 are matters primarily for consideration by the concerned revenue authorities; hence, if a retired Army member's records are corrected nullifying his retirement and retroactively restoring him to active duty status, his application for a tax refund believed due for Social Security (FICA) taxes debited against the active duty military backpay credited to him in the settlement of his military pay accounts would be a matter for submission to the United States Internal Revenue Service. B-195129, April 28, 1980.

Restored to active duty--interest on backpay--

Provisions of statutory law contained in 10 U.S.C. § 1552 governing military records correction proceedings contain no authority for the payment of interest on backpay awards;

hence, interest does not accrue on military backpay due to a service member on account of a correction of his records under 10 U.S.C. § 1552, since interest on unpaid accounts may not be assessed against the United States in the absence of express statutory authority. B-195129, April 28, 1980.

Restored to active duty--interim erroneous payment--In an erroneous overpayment of military pay and allowances is made to an Army member at the time of his separation from active duty, and that separation from service is later nullified through the correction of his records under the authority of 10 U.S.C. § 1552, the erroneous overpayment should be included as a debit to be set off against credits for military backpay due the member in the monetary settlement concluded under 10 U.S.C. § 1552, and it should not be collected through deductions from the member's current pay and allowances. B-195129, April 28, 1980.

Restored to active duty--District Court recovery limitation \$10,000--Air Force member who successfully sues in Federal District Court for reinstatement to active duty and damages may not recover on an administrative claim for backpay in excess of \$10,000 jurisdictional limitation of district court under 28 U.S.C. § 1346(a)(2). Since claim filed concerns same parties and issues, including amount of damages, as decided by district court, doctrine of res judicata precludes consideration of this claim. B-199060, July 22, 1980 (59 Comp. Gen. ____).

Separation - record correction - change in nature of discharge--Discharge of service member terminates his entitlement to military pay and allowances and subsequent change in nature of discharge from dishonorable to general does not affect member's status in regard to his separation and does not create entitlement to pay and allowances after period of discharge. B-198168, April 16, 1980.

Record correction after court-martial--The correction of military record to show a general discharge which does not otherwise change a court-martial sentence under which a dishonorable

discharge was issued creates no entitlement in the member to receive pay and allowances forfeited pursuant to the court-martial. B-198168, April 16, 1980.

Ineffective discharge--A discharge of an enlisted man, which was to be held in abeyance in the event that further hospitalization was required for a new disability not present when the member went before the Physical Evaluation Board but which, nevertheless, was effected, even though prior to the effective date of the discharge the member was hospitalized for a new disability, is a conditional discharge which does not terminate the member's active status and, therefore, the enlisted member is entitled to active duty pay until subsequent placement on the temporary disability retired list. 39 Comp. Gen. 766 (1960).

Ordered home to await retirement--A member who is ordered to his home in an awaiting order status pending action on whether he will be placed on the temporary disability retired list is entitled to active duty pay and allowances for the period he is in that status retirement or of official advice that he has been retired. B-183625, August 20, 1975. Compare 42 Comp. Gen. 158 (1962).

Active duty performed due to failure to receive retirement orders--While the retirement of a Navy officer placed on the retired list voluntarily for length of service pursuant to section 6 of the act of February 21, 1946, is effective on the first day of such month as the President may designate, an officer who did not receive notice of such retirement until after the effective date thereof and who currently was paid active-duty pay and allowances may be regarded as having been in a de facto status and entitled to retain such pay and allowances or recover any amounts which may have been refunded less any retired pay received. 30 Comp. Gen. 195 (1950). See also 35 Comp. Gen. 225 (1955), and 49 Comp. Gen. 429 (1970).

National Guard member; implied consent to remain on active duty--A member of National Guard who was court-martialed for offenses committed after terminal date of his active duty for training is entitled to pay and allowances for period subsequent to such terminal date, including period

of confinement, except as forfeited under court-martial sentence, since consent to remain on active duty (constructive extension) may be implied from totality of circumstances. B-184829, April 15, 1976.

After expiration of active duty period; hospitalization--An enlisted reservist who subsequent to the scheduled termination of his active duty tour under 10 U.S.C. 263 note was declared mentally incompetent due to an illness that existed prior to the tour of duty and retained as a hospital patient until honorably discharged for physical disability without severance pay is not entitled to active duty pay and allowances or leave credit for any period after the termination of his active duty in the absence of a statute providing otherwise, for a person suffering from mental illness not incurred in line of duty accrues no greater right to pay and allowances than he would accrue if he were suffering from a physical illness not incurred in line of duty, and the general rule that pay and allowances do not accrue to an enlisted man held beyond the expiration date of his enlistment or scheduled tour of duty unless such holding is for the convenience of the Government or for the purpose of making good time lost applies. 43 Comp. Gen. 380 (1963).

After expiration of enlistment - hospitalization for disability--An Army enlisted man who incident to an injury reported to be due to his own misconduct is hospitalized for a period subsequent to the expiration of his term of enlistment is nevertheless entitled to pay and allowances for the period, an administrative determination under 10 U.S.C. 1216 that the physical condition of the member which resulted from corrective surgery at an Army hospital at the time of the injury is a disability incurred or aggravated during active service, not the result of misconduct and incurred in line of duty, governing his rights, and the member having executed the medical and hospitalization care affidavit required by 10 U.S.C. 3262, and having been recommended for physical disability retirement, may be regarded as being retained in the service for medical treatment and hospitalization within the meaning of section 3262 so as to entitle him to pay and allowances for the period of hospitalization following the expiration of his enlistment. 47 Comp. Gen. 351 (1967). See also 40 Comp. Gen. 664 (1961), and 54 Comp. Gen. 33 (1974).

After expiration of enlistment--court-martial review pending--Army enlisted member sentenced by court-martial to dishonorable discharge, confinement for life, reduction in grade, and forfeiture of all pay and allowances, was retained in confinement after expiration of his enlistment pending review of his sentence. On appeal his sentence was reversed and rehearing held, which resulted in his conviction for lesser offense involved in earlier conviction. Reversal did not entitle him to "restoration" of pay and allowances under 10 U.S.C. 875(a) for period subsequent to expiration of his enlistment since his lack of entitlement to pay during that period was due to expiration of his enlistment, not execution of court-martial sentence. B-192082, December 21, 1978.

After expiration of enlistment - while in parole status--A service member whose enlistment expired while in confinement pending appellate review of his court-martial sentence is not entitled to pay and allowances for period of confinement subsequent to expiration of his enlistment unless the conviction is completely overturned or set aside. Where it is so overturned or set aside and a portion of confinement time is served in a parole status, since the military exercises constraints on parolee's action, even though to a lesser degree than actual confinement, such constraints are just as real. Therefore, the individual is entitled to pay and allowances for his parole period. Compare Cowden v. United States, Ct. Cl. No. 242-78, decided June 13, 1979. 59 Comp. Gen. 12 (1979)

Parole status - civilian earnings--The rules governing parole of a service member confined by military authorities as a result of a court-martial sentence require as a prerequisite to that parole that the parolee will have gainful employment. Therefore, in the absence of a statute so authorizing, it would be improper to set off civilian earnings against military pay due for a parole period which becomes a period of entitlement to pay and allowances, unless the earnings are from Federal civilian employment which is considered incompatible with military service. 59 Comp. Gen. 12 (1979).



Members retained after eligible for retirement--The authority vested in the Secretaries of the military departments to retain members of the uniformed services on active duty or in one of certain reserve components under 10 U.S.C. 676 after the members have qualified for retired pay under Title III of the Army and Air Force Vitalization and Retirement Equalization Act of 1948 was intended to have limited application to permit the Secretaries to order a member retained in the service because of some special qualification, ability, or situation; however, in those cases where members have been retained after qualification and there is a doubt as to whether retention was effected by a specific order or instruction, no question will be raised. 38 Comp. Gen. 648 (1959).

Cadets, midshipmen disenrolled from service academies

Cadet or midshipman who resumes his enlisted status--A disenrolled service academy cadet or midshipman who returns home to await reassignment to active duty as an enlisted man is entitled to active duty pay and allowances from the date his separation is approved and his reassignment orders are issued to the date he receives notification of the action, the cadet or midshipman pursuant to 10 U.S.C. 516(b) "resumes his enlisted status" when separated for any reason other than appointment as a commissioned officer or for disability, and he is required to complete the period of service for which he enlisted or for which he is obligated, unless sooner discharged. As the member while at home awaiting orders will not be subsisted at Government expense, he is entitled pursuant to 37 U.S.C. 402(d) to a basic allowance for subsistence. 49 Comp. Gen. 407 (1969).

Cadet or midshipman awaiting transfer to Reserves--A disenrolled service academy cadet or midshipman who while awaiting transfer by the Secretary concerned under 10 U.S.C. 4348(b), 6959(d), and 9348(b), to a Reserve component returns home, is not entitled to pay and allowances until he is required to comply with new active duty orders, as the transfer has the effect of discharging the cadet or midshipman from his enlisted contract and, therefore, the member is not in an active duty status

for pay and allowances purposes until he complies with his new orders. 49 Comp. Gen. 407 (1969).

Delay between termination of cadet status and resumption of enlisted status--The fact that several days elapsed between the time a Regular enlisted man of the uniformed services reverted to that status pursuant to 10 U.S.C. 516(b) upon termination from the Air Force Academy and the date he received his active duty orders at his home in Los Angeles does not affect the member's entitlement to pay and allowances as of the date of resuming Regular enlisted status. If the member should, however, be transferred to active duty as a reservist and ordered to Andrews Air Force Base in Maryland, his enlisted status having terminated when disenrolled from the Academy, his right to pay and allowances would commence on the day he departed from home by the means of transportation authorized, and should the member's orders reach him while visiting in the vicinity of the Base, pay and allowances would commence on the ordered reporting date. 49 Comp. Gen. 407 (1969).

Members in a missing, interned, etc., status

When a member of the uniformed services enters a missing or other status covered by the Missing Persons Act, as amended, 50 U.S.C. App. 1001-1015, permanent items of pay and allowances, except temporary allowances, may continue to be credited to his account provided no change occurs in conditions of entitlement, section 2 of the act authorizing the same basic, special and incentive pay, basic allowances for subsistence and quarters, and station per diem allowances, not to exceed 90 days, for a period of absence that a member was entitled to at the beginning of his absence. 44 Comp. Gen. 657 (1965).

A member of the Air Force designated his father, who was not dependent upon him for support, to receive an allotment of all his pay and allowances in case he became missing. After the member became missing the Secretary of the Air Force had authority under the Missing Persons provisions to change the allotment to the father when he determined it was in the interest of the member to put pay and allowances into the Uniformed Services Savings Deposit Program rather than pay them over to the father. B-196808, July 17, 1980.

Members killed in action--The father of a member in a missing status is not entitled to the accrued pay and allowances, including amounts deposited in the Uniformed Services Savings Deposit Program (USSDP), when the member is determined to have been killed in action, even though he was designated to receive an allotment of 100 percent of the member's pay and allowances if he went in a missing status, since the Secretary concerned has the authority under 37 U.S.C. 551-558 to discontinue such an allotment. The amounts accruing to member's account, including deposits in the USSDP are then distributed in accordance with 10 U.S.C. 2771, in this case to the designated beneficiaries, his sisters. B-196808, July 17, 1980.

C. Induction or Enlistment

Erroneous induction; voidable status

The reclassification and immediate induction of an individual because he failed to keep his draft board informed and, therefore, he was declared delinquent, does not make the induction void but merely voidable, and upon discharge from the Marine Corps, under honorable conditions by reason of erroneous

an Outpatient Medical Treatment Identification Card by a military physician on active duty with the Armed Forces, who is engaged in limited medical practice after hours with the permission of his commanding officer, may not be paid by the Veterans Administration in the absence of statutory authority under the rule that concurrent Federal civilian employment and active duty military service are incompatible. 47 Comp. Gen. 505 (1968).

Personal expenses incident to military duties--
Service members not in a travel status incurred personal expenses incident to their military duties during a snowstorm and seek reimbursement. The entitlement of members of the armed services to be so reimbursed for expenses incident to their military service is contained in title 37, United States Code. In the absence of specific authorization, there is no legal basis upon which this Office may authorize reimbursement. B-194499, October 31, 1979.

In the absence of legislation an enlisted member of the Air Force who is ordered to secure a commission as a notary public in connection with his military duties is not entitled to be reimbursed for any expenses associated with becoming one since these expenses are personal and are to be paid by the member. B-196533, April 22, 1980.

Although official duties of the District Commander of the Seventh Coast Guard District require that he be available 24 hours a day to respond to problems arising from the Cuban Refugee Freedom Flotilla, 31 U.S.C. 679 prohibits the District Commander from being reimbursed by the Government for the costs associated with installing and maintaining a telephone in his residence. See Comp. Gen. decisions cited. B-199793, September 11, 1980 (59 Comp. Gen. ____).

Acceptance of payments from sources other than the Government

Reserve officers on active duty as interns in private hospitals--Naval Reserve officer on active duty as an intern in a municipal hospital who is paid compensation for the performance of the service required of him as a Reserve officer on active duty, receives the compensation incident to

his duties for the benefit of the United States, and therefore, the compensation should be collected from the officer and covered into the Treasury as miscellaneous receipts. 32 Comp. Gen. 454 (1953). See also 30 Comp. Gen. 246 (1950).

Officers assigned to educational institutions as a part of ROTC program may accept certain nonpay benefits--The acceptance by senior commissioned officers of the uniformed services assigned to educational institutions having a Reserve Officers' Training Corps program of some of the benefits offered civilian members of the staff--free or reduced rates for tuition, tickets to school activities, parking privileges, and books and supplies--would not violate 18 U.S.C. 209(a), prohibiting receipt of salary from any source other than the United States, the benefits which are peculiar to educational institutions having no counterpart in the military compensation system nor involving conflict of interest or loyalty on the part of the officers, who assigned to educational institutions with the academic rank of professor (10 U.S.C. 2102), should be given some school status by the institution; therefore, as no direct payments are involved in the acceptance of the proposed additional benefits, Department of Defense Directive No. 5500.12, dated August 4, 1965--"Acceptance by ROTC Staff Members of Payments or Other Benefits Offered by Educational Institutions"--may be amended to include tuition assistance, tickets to school activities, and parking and book privileges. 45 Comp. Gen. 308 (1965).

Honorarium for lecture given by active duty officer--A check which was received by an Army officer as an honorarium for a lecture he was designated to give in his capacity as an officer on active duty constitutes earnings, in excess of regular pay and allowances, which belong to the United States as employer, and, therefore, the officer is required to endorse the check for deposit into the Treasury. 37 Comp. Gen. 29 (1957).

F. Application of Adjustments Increases to Pay

Increase comparable to civilian employees

Effective date of adjustment under PL 90-207--Members of the uniformed services entitled, pursuant to Public Law 90-207, approved December 16, 1967,

to pay increases comparable to those prescribed for civilian employees under the Federal salary Act of 1967, the second of a three-stage upward adjustment that is effective for civilian employees on the "first day of the first pay period beginning on or after July 1, 1968," may be made effective for military personnel on July 1, 1968, as the monthly pay basis fixed by 37 U.S.C. 203(a) meets the standard that the pay increase for both civilian and military personnel commence on the first day of the first pay period starting July 1, 1968. 47 Comp. Gen. 549 (1968).

Retroactive pay adjustment - active duty requirement--The fact that a reemployed civilian who while on military furlough served on active military duty was on a civilian roll on April 15, 1970, the date of enactment of the Federal Employees Salary Act of 1970, Public Law 91-231, does not entitle him under the act to a retroactive adjustment in basic pay for the active military duty performed during the period January 1, 1970, through March 15, 1970, as the act provides compensation increases for Federal classified employees only. However, although Public Law 90-207, December 16, 1967, provides for an increase in basic pay for military personnel whenever the General Schedule of compensation for Federal classified employees is increased, the Secretary of Defense, in implementing the 1970 act pursuant to

II. NON PAY OR REDUCED PAY STATUS

A. Absence Without Leave

Civil arrest or confinement

Member restricted to the state by civilian authorities--Navy member who while on authorized leave was arrested by civilian authorities and then restricted to State of South Dakota while awaiting trial, at which he was convicted, and who apparently performed no duties commensurate with grade or specialty is not entitled to pay and allowances during period subsequent to authorized leave, as absence was result of own misconduct and was not excused as unavoidable. B-179866, July 31, 1974.

Administrative determination as to whether absence is unavoidable is necessary--A Marine Corps enlisted member was charged with a crime by civilian authorities and placed in civil confinement pending trial. At trial he was found not guilty by reason of insanity and transferred to a state mental institution for an indefinite period of time. An administrative determination should be made in each individual case of absence from duty while in civil confinement as to whether it is to be excused as unavoidable as required by the Military Pay and Allowances Entitlements Manual. Payment for the period in question may be made if an administrative determination favorable to the individual is made. B-194949, November 7, 1979.

Indicted but released due to mental incompetency--A Marine Corps member who while in an authorized absence status is confined and later indicted by civilian authorities and who on the basis of a court finding of mental incompetency is retained in a Medical Center for Federal Prisoners until discharge of the indictment and his return to military control, is not entitled to credit in his final military pay record with pay and allowances for the period of absence in view of the Commandant of the Corps determination that the absence may not be excused as unavoidable, and that the member's absence in the hands of the civil authorities must be considered "time lost" for pay purposes. 48 Comp. Gen. 792 (1969).

Paroled to custody of military authorities--A member of the uniformed services under a sentence of confinement by civil authorities who while paroled to the custody of military authorities on a daily basis performed duties with his unit in accordance with the court's work release recommendation, satisfactorily serving in the capacity of a noncommissioned officer squadron leader, a position commensurate with his grade, military specialty, and length of service, is, pursuant to 37 U.S.C. 204(a) and 101(18), which govern entitlement to basic pay, eligible to receive pay and allowances commensurate with his grade and specialty for each day of full-time duty performed while paroled to the military authorities. 52 Comp. Gen. 317 (1972).

Army member who was under sentence of civil confinement for 6 months but only had to serve sentence on weekends under a work release program is not entitled to pay and allowances for weekends actually confined, since he is only entitled to receive pay and allowances in such circumstances for week days that he was paroled into custody of military authorities and then performed or was available to perform full-time duties commensurate with his grade and specialty. B-191301, May 17, 1978. 52 Comp. Gen. 317 distinguished.

Confined or restricted for foreign civil offense

Pretrial custody at U.S. installation for foreign authorities--A service member charged with commission of a civil offense on foreign soil is entitled to his pay and allowances for any pretrial custodial period at a U.S. military installation where the decision to incarcerate or to merely restrict the member to duty station and assign him to perform duties on full-time basis remains in installation commanders. However, a service member charged with commission of a civil offense on foreign soil is to be considered constructively absent from duty and not entitled to pay and allowances when member is actually incarcerated on the basis of request for incarceration by foreign civilian authorities under the provisions of a treaty or other international agreement. 55 Comp. Gen. 186 (1975). See also 51 Comp. Gen. 380 (1971), and 45 Comp. Gen. 766 (1966).

Civil arrest

Where incarceration in U.S. Military Correctional facility is at request of Japanese authorities, no discretionary authority exists in military installation commander to incarcerate or merely to restrict to installation, member is deemed to be constructively absent during period of actual incarceration subsequent to indictment and other than to extent that such time is covered by unused accrued leave, no entitlement to pay and allowances accrues. B-169366, November 29, 1977, sustaining 51 Comp. Gen. 380. Cf. 55 Comp. Gen. 186.

Absence from duty due to foreign judicial proceedings--A service member charged with commission of a civil offense on foreign soil is not entitled to pay and allowances for period when

expiration of his enlistment pending review of his sentence. On appeal his sentence was reversed and rehearing held, which resulted in his conviction for lesser offense involved in earlier conviction. Reversal did not entitle him to "restoration" of pay and allowances under 10 U.S.C. 875(a) for period subsequent to expiration of his enlistment since his lack of entitlement to pay during that period was due to expiration of his enlistment, not execution of court-martial sentence. B-192082, December 21, 1978.

After expiration of enlistment--while in parole status--A service member whose enlistment expired while in confinement pending appellate review of his court-martial sentence is not entitled to pay and allowances for period of confinement subsequent to expiration of his enlistment unless the conviction is completely overturned or set aside. Where it is so overturned or set aside and a portion of confinement time is served in a parole status, since the military exercises constraints on parolee's action, even though to a lesser degree than actual confinement, such constraints are just as real. Therefore, the individual is entitled to pay and allowances for his parole period. Compare Cowden v. United States, Ct. Cl. No. 242-78, decided June 13, 1979. 59 Comp. 12 (1979).

After expiration of enlistment - not restored to duty--Enlisted member who returns to military control after deserting and whose term of enlistment had expired prior to his return to duty is not entitled to pay and allowances until he is officially restored to duty for the purpose of making good time lost during the period covered by the contract of enlistment. 54 Comp. Gen. 862 (1975).

After expiration of enlistment - restored to duty--Enlisted member who deserted, was returned to full duty, tried by court-martial, convicted and confined but whose court-martial conviction did not include a forfeiture of pay is entitled, in accordance with paragraph 10316b(4) of the Department of Defense Military Pay and Allowances Entitlements Manual, to pay and allowances for the period of confinement. 54 Comp. Gen. 862 (1975). B-192082, December 2, 1975.

Pay of absent member begins upon placement under military control--A Marine Corps Reserve who upon failing to report on March 1, 1964, for involuntary active duty for training is apprehended and placed under the jurisdiction of military authorities in the area of his home on March 6, and delivered into custody at his duty station on March 14, is entitled to pay from March 6, in accordance with paragraph 044250-1 of the Navy Comptroller Manual which provides that a member absent without authority is entitled to pay from the date he returns to the jurisdiction of the Armed Forces, and the delay in transferring him to his assigned duty station after he was placed under military control is considered to have been for the convenience of the Government. 44 Comp. Gen. 80 (1964).

While court-martial sentenced under appeal--An enlisted man who is sentenced by a court-martial to



conduct discharge upon conviction by special court-martial that he had violated Article 121 of the Uniform Code of Military Justice, may not be offset against the final pay due the member, an indebtedness to a commissioned officer's mess--a nonappropriated fund activity--not being equivalent to an indebtedness due the United States there is no basis for withholding the member's final pay as an involuntary set-off against the debt in the absence of a statutory provision authorizing deductions from pay that is similar to the authority in 37 U.S.C. 1007(c) and (d) granted to the Departments of the Army and Air Force. 43 Comp. Gen. 431 (1963).

Acceptance of settlement by an Army member incident to the administrative correction of his military records would not operate to bar his subsequent request for waiver of erroneous payments of military pay and allowances shown as debits to his account in the settlement statement; and the gross amount of such erroneous payments could be considered for waiver under 10 U.S.C. 2774. 57 Comp. Gen. 554 (1978).

Debt for Health Profession Scholarship

Doctor participating in Armed Forces Health Profession Scholarship Program received medical school assistance, including cost of tuition and books, and \$400 in monthly stipends in return for active service obligation on graduation. He applied for and was granted conscientious objector discharge after graduation before fulfilling any of service obligation. Doctor must reimburse Navy for full amount of financial assistance he received, including monthly stipend. Monthly stipend payments are included in term "other education costs" that he agreed to repay when he was accepted into program, if he did not fulfill his service commitment. B-190935, January 25, 1979.

United States debts to Members - Member Bankrupt--
Member of the Navy filed a voluntary petition in bankruptcy in which he listed the Government as a creditor. Prior to the date the petition was filed the United States was indebted to the member for accrued leave rations. Before the petition was filed the Government deducted the amount owed for leave rations from an outstanding debt the member owed the Government. The filing

of the petition did not affect the Government's action to set off and that action effectively constituted payment of the amount due the member and reduction of his debt prior to the date the petition in bankruptcy was filed. B-195066, September 22, 1980.

IV. GRADE OR RANK

A. Pay is Generally Based on Grade or Rank to Which Member Assigned

Enlisted member who performed officer duties
Claimant's contention that Air Force was unjustly enriched because, for almost 3 years, he assumed duties reserved for officers but received compensation only in enlisted pay grades is rejected, since military members are only entitled to pay and allowances authorized by statute for their grade and years of service, not according to their duties, under 5 U.S.C. 5535(b)(1) and 5536. B-181788, November 11, 1974.

Member reduced in grade

Although the reduction of a petty officer from first class E-6 to second class E-5 for incompetency to perform the duties of the higher grade was based on two special evaluations rather than on the required waiver of the condition precedent to a reduction--"the evaluation of a member for at least two consecutive marking periods," the member is not entitled upon advancement to E-6 to the rate of pay of that grade for the period of reduction in the absence of a correction of records pursuant to 10 U.S.C. 1552. Reduction orders issued by competent authority are valid even though not issued in strict conformity with administrative regulations and, therefore, under 37 U.S.C. 204(a) the member is entitled only to the pay and allowances of grade E-5 while serving in that grade, unless his record warrants correction. 48 Comp. Gen. 416 (1968).

Officers serving in certain positions/grades

Army Chief of Staff--Upon retirement, effective July 1, 1968, an Army Chief of Staff whose appointment to a 4-year term on July 3, 1964 expires July 2, 1968, may be recalled to active duty in his retired

grade pursuant to 10 U.S.C. 3504, assuming confirmation under 10 U.S.C. 3962, to complete the 4-year term as Chief of Staff, and he may be paid as Chief of Staff for July 1 and 2, 1968. 47 Comp. Gen. 696 (1968).

Navy Assistant Judge Advocates--Court of Claims in Selman v. United States, 204 Ct. Cl. 675 held that naval officers ordered to serve in positions of Assistant Judge Advocates General are entitled to at least the pay of a rear admiral (lower half) while serving in such positions whether they were "detailed" or "assigned" to such positions. Our decision at 50 Comp. Gen. 22 which determined that such officers were not entitled to pay of rear admiral (lower half) will no longer be followed. Consequently, the successors to the plaintiffs in Selman in the statutorily created positions are also entitled to receive the pay of rear admiral (lower half). 55 Comp. Gen. 58 (1975).

Navy rear admiral retained on active duty--A naval officer who at the time he is placed on the retired list and retained on active duty has served more than 2 years in the grade of rear admiral of the lower half may not have the 2 years of active duty performed prior to retirement regarded as qualifying service for active duty pay or subsequent retired pay of the upper half under 37 U.S.C. 202(e) and 10 U.S.C. 6487, which require that the 2 years of qualifying service be performed after rather than prior to retirement and, therefore, if the officer is retained on active duty for 2 years after placement on the retired list he will be entitled to the pay and allowances and subsequent retired pay for a rear admiral upper half. 44 Comp. Gen. 93 (1964).

Coast Guard "extra numbers" rear admirals--Coast Guard officers serving on active duty as "extra numbers" in the grade of rear admiral under the authority of 14 U.S.C. 432 and 433 who are specifically excluded, pursuant to 14 U.S.C. 42(e), in determining the authorized strength of that grade are, nevertheless, entitled to receive the active duty basic pay of a rear admiral of the upper half in the order of their seniority in the grade, in view of the unqualified provision of 37 U.S.C. 202(f) that one-half the number of officers on the active

the right to the pay and allowances of the higher grade, they are prospectively effective. 42 Comp. Gen. 445 (1963). See also 43 Comp. Gen. 400 (1963). Compare 46 Comp. Gen. 121 (1966).

Navy Dental Corps officer appointment--A dentist who accepted an appointment as lieutenant (junior grade) in the Navy Dental Corps upon graduation from dental school (June 4, 1958) and who was assigned a line officer as running mate who was eligible for promotion to lieutenant 3 days prior to the date of appointment may not have the initial appointment regarded as erroneously made in the junior grade rather than in the grade of lieutenant, because initial appointments of dental graduates are required to be made in the junior grade and under paragraph (f) of section 201 of the Army-Navy-Public Health Service Medical Officer Procurement Act of 1947, assignments of line running mates are required to be made in the same grade (junior grade); however, since the officer accepted an appointment as lieutenant on July 3, 1958, as a result of the vacancy, the officer's right to pay of that grade from the date the line officer who should have been assigned as running mate was promoted will not be questioned. 41 Comp. Gen. 406 (1961).

Temporary promotions of Navy ensigns and Marine second lieutenants--To meet the problems arising by reason of the absence in 10 U.S.C. 5784, authorizing the temporary promotion of Navy ensigns and Marine Corps second lieutenants, of language similar to that contained in section 5787 entitling temporarily promoted Navy and Marine Corps officers to the pay and allowances of the higher grade from the date the promotion is made, and providing that upon the termination or expiration of the temporary appointment, the officer shall have the grade he would hold if he had not received a temporary promotion, will require remedial legislation that would be retroactively effective to the extent, at least, of rectifying any legal deficiency in superseding appointment actions issued under section 5784 to the officers serving under prior promotions effected pursuant to section 5787. 47 Comp. Gen. 587 (1968).

Promotion resulting from Correction Board action--
The fact that a Correction of Military Records Board on April 11, 1969, directed a change of records pursuant to 10 U.S.C. 1552, to show that an Air Force captain had not been twice passed over for promotion to the temporary grade of major, and that if selected for promotion by the next regularly scheduled board, the promotion was to be effective from the date the first selection board convened, although at the same time denying his request for promotion, does not entitle the officer promoted pursuant to 10 U.S.C. 8442 and 8447(b) on June 27, 1969, effective February 20, 1958, to increased pay prior to June 27, 1969, for until promoted, no date could be established for the commencement of higher pay, and the Correction Board limited to making changes in an existing record, its attempt to control the future contingent event of a promotion is not within the purview of 10 U.S.C. 1552. 50 Comp. Gen. 125 (1970).

Coast Guard member whose service records were changed by Board for Correction of Military Records to show he had retired on July 1, 1971, in grade of warrant officer (W-3) rather than petty officer (E-7), and who accepted amount tendered to him in satisfaction of his claim incident to that change in his records, may not be allowed additional amounts based on his theory that had he actually been a warrant officer in 1971 he would not have retired and would later have been promoted to W-4, since correction board actions are "final and conclusive" and member's acceptance of amounts tendered "fully satisfies" his claim in the matter. 10 U.S.C. 1552 (1976). B-198266, May 9, 1980.

Promotions while in missing status

Requiring "acceptance" of promotion defeats purpose of Missing Persons Act--Although in view of the absence of language similar to that contained in section 5787, an acceptance is required to make a temporary promotion under 10 U.S.C. 5784 legally effective for the purpose of receiving the pay and allowances of the higher grade, to deny Navy ensigns and Marine Corps second lieutenants in an "missing status" the benefits of the temporary promotions prescribed by section 5784 on the basis of the acceptance requirement would defeat the objective

of the Missing Persons Act. Therefore, the pay account of a Marine Corps second lieutenant temporarily promoted under section 5784 to first lieutenant while in a missing status may be credited with the increased pay and allowances of the higher grade from the date administratively determined under the authority of 37 U.S.C. 556 to be the date the officer would have accepted the promotion. 47 Comp. Gen. 587 (1968).

Promotion to sergeant while missing-later reenlisted as private--A redetermination of grade of an Army

enlisted man under the provisions of the Missing Persons Act, as amended, promoting him to the grade of first sergeant while in a missing in action status may not operate to entitle him to the pay of such higher grade under a reenlistment contract in the grade of private first class

J. Computing Service Credit - Lost Time

Time lost which has been made up

In computing length of service for pay purposes when time lost has been made up to complete enlistment contracts pursuant to 10 U.S.C. 629a, the time should be accounted for on a day-for-day basis in those cases where the 30-day-month method would not be to the member's advantage by virtue of service in months with less or more than 30 days. 37 Comp. Gen. 455 (1958).

Members required to make up lost time

In the computation of length of service for enlisted members of the uniformed services who are required to make good time lost to complete their enlistment contracts, a proposed rule which would permit the computation of time lost and not made good on a day-for-day basis would be in conflict with the act of June 30, 1906, 5 U.S.C. 84, which requires computation of service on a 30-day-month basis. 38 Comp. Gen. 824 (1959).

VI. RESERVES

A. Duty Status

Status dependent on advance written or verbal orders--A National Guard member may not be placed in a duty status in the absence of advance written or verbal orders, nor may he issue such orders to himself. Hence, an Air National Guard officer who stated that he planned to perform military duty on October 20, 1978, may not be regarded as being in a duty status at the time of his death on that date where no advance orders authorizing the performance of such duty had been issued. B-194189, January 7, 1980.

B. Entitlement To Pay Based On Statute

Some action by member required--Member of an Army Reserve unit who was given general discharge which was later upgraded to honorable and who was told not to attend inactive duty drill periods or active duty for training while discharge proceedings were in progress is not entitled to pay for the period in

which he did not attend the drill periods and the active duty for training. A military member's entitlement to pay is based on statute and the relevant statutes, 37 U.S.C. §§ 206(a), 204(a)(2), require a Reserve member to attend meetings or perform other equivalent duty or be ordered to active duty or active duty for training in order to be paid. See B-187167, December 23, 1976. B-196462, May 5, 1980.

C. Inactive Duty Pay (Drill Pay)

National Guard - federal recognition requirement

Federally recognized officer entitled to pay--Under the Career Compensation Act of 1949, a federally recognized officer of the National Guard - as distinguished from the National Guard of the United States - is entitled to pay for armory drills and field training actually attended while in a federally recognized status, even though the officer may not have held a commission as a member of the National Guard of the United States during the period involved. 31 Comp. Gen. 482 (1952).

National Guard engineer transferred to Air National Guard--A federally recognized National Guard engineer officer who transferred to the Air Force National Guard and assumed the duties of the Air Force position although not at that time federally recognized as an Air Force officer, is not entitled to Federal pay under the National Defense Act, as amended, for any drills or field training performed in the new position prior to the date he was federally recognized as an officer in the Air Force National Guard. 30 Comp. Gen. 199 (1950).

Voluntary relinquishment of Federally recognized rank--An officer in the Illinois National Guard who voluntarily relinquishes his federally recognized commission as colonel upon the acceptance of a commission as brigadier general is not entitled to Federal pay for armory drill and performance of administrative functions as a colonel for the period subsequent to his promotion in which no duties were performed as a colonel. 34 Comp. Gen. 273 (1954).

Duty in lieu of drills (equivalent training)

Drill pay not authorized - attending service school--A regularly scheduled drill of a National Guard officer's unit which takes place while he is attending a service school may not be regarded as a "regularly scheduled drill or assembly" of his unit for appropriate duty pay; and the performance of appropriate duty in lieu of a regularly scheduled drill which an officer has missed, due to attendance at a service school for which he received basic pay, cannot qualify the officer for appropriate duty pay under the provisions of subsection 501(a) of the Career Compensation Act of 1949. 34 Comp. Gen. 679 (1955).

Drill pay authorized by regulations and orders - attending service school--National Guard officer who performs equivalent training in lieu of drills held by his unit while he is on active duty for training at a service school may have such duty considered for pay purposes under current regulations which do not preclude payment for equivalent training for active duty training, provided the officer is in an armory drill status and written orders authorized such training. 37 Comp. Gen. 193 (1957).

Equivalent training not performed within prescribed time period--National Guard member who performed equivalent training in October and November 1972, in lieu of scheduled assembly on January 14, 1973, is not entitled to pay for such equivalent training since subparagraph 4-13(f) of AR 140-1, September 15, 1972, provides that equivalent training must be performed within

expiration of his terminal leave but who, prior to the expiration of his leave, received and complied with modifying orders directing travel to a naval hospital for observation and treatment is to be regarded as in a continuous active-duty status under such orders as modified and entitled to active-duty pay and allowances from the time his terminal leave would have expired to the date he subsequently was released from active duty. 26 Comp. Gen. 40 (1946).

Computation of Reserves active-duty pay

Actual days served - less than 30--A reservist of the Armed Forces who serves on active duty for training from February 1, through 28, in a nonleap year is not entitled under A-71273, March 2, 1936, to a full month's active duty pay and allowances without deduction for the two constructive days at the end of February. The rule in the 1936 decision that reservists ordered to duty for a period of less than 30 days are not within the scope of the act of June 30, 1906, which prescribe a 30-day calendar month for computing the pay of persons paid on an annual or monthly basis, and are therefore, only entitled to pay for the actual number of days served, including the 31st day of the month, not having been changed by the codification in 37 U.S.C. 1004 of the governing statutes, the decision of March 2, 1936, is affirmed. 47 Comp. Gen. 515 (1968).

Day on which pay begins for Reserve called to active duty--The law and regulations contemplate that the date on which pay should begin for a Reserve member called to active duty will be based on a determination of the date he necessarily was required to begin the travel from his home by the mode of transportation authorized and actually used so as to arrive at his duty station on the designated reporting date. B-172856, July 7, 1971. See also 52 Comp. Gen. 482 (1973).

Day on which pay terminates for Reserve called to active duty--A Reserve officer ordered to active duty training (ADT) with a reporting date of 8 A.M., October 16, 1978, travels by air on October 15 to Washington, D.C., and completes his duty assignment by 6:30 p.m. on October 16. Using the directives of the DODPM, constructive travel by air from Washington, D.C., to St. Louis

could have been completed before 12 p.m. on October 16, 1978. He is not entitled to an additional day of active duty pay and allowances for October 17 for return travel to his home. B-194938, October 26, 1979.

E. Reserves Injured or Ill on Duty

Status during hospitalization

A member of the Army National Guard or Army Reserve called or ordered to active duty for a period of 30 days or less under self-terminating orders who is hospitalized under the provisions of 10 U.S.C. 3721(c)

because of an in-line-of-duty injury not due to own misconduct during that time, remains in an active military status only through the last day of duty as prescribed by those orders, with the right to continue to receive pay and allowances thereafter based on disability to perform military duty as authorized by 37 U.S.C. 204(g)(2). 57 Comp. Gen. 305 (1978). 40 Comp. Gen. 664, modified.

Orders purporting to extend active duty

A member of the Army National Guard or Army Reserve, called or ordered to active duty for a period of 30 days or less under self-terminating orders who is hospitalized due to an in-line-of-duty injury not due to own misconduct during that time, would not be placed in a status of being on active duty for 30 days or more even though the period of hospitalization is covered by an amendment to his orders or new orders issued to extend his period of active duty solely for the purpose of such hospitalization, since such a change in status is not authorized. Thus, such orders would not carry him beyond 30 days for active duty purposes and his rights to be retired for physical disability would remain determinable under 10 U.S.C. 1204. 57 Comp. Gen. 305 (1978).

Pay entitlement while disabled

Pay continues while member incapacitated for military duty--A member of the Air Force Reserve who is disabled in line of duty from injury while performing annual training is entitled by law to continued pay and allowances during the subsequent period when the member remains incapacitated for the performance of normal military duties, and the determination as to how long the disability continues is left to the exercise of sound administrative judgment. In each case the service concerned is to determine when the injured member has recovered or determine that such member should be separated for disability. 37 U.S.C. 204(g)(2) (1976). B-195470, November 14, 1979.

Pay terminates when found fit for military duty--Upon reconsidering the entitlements of National Guard members and other reservists under the act of June 20, 1949, which prescribes the same benefits for reservists injured or disabled in line of active duty or training as is accorded Regular members, although the holding that the ability to resume normal civilian employment is not the standard for

determining entitlement to disability pay where contemporaneous service medical data are available must be adhered to as termination of disability pay is based upon ability to perform military duty or a final disposition of the matter, decisions that hold physical presence at a regular drill or a conditional temporary assignment to limited duty terminates entitlement to pay and allowances or medical care and hospitalization will no longer be followed, but a member must promptly report injury, disease, and his current disability status to permit action to retire, separate, or refer him to the Veterans Administration. 52 Comp. Gen. 99 (1972). See also 48 Comp. Gen. 1 (1968).

Army National Guard member injured in line of duty during annual training, who was thereby rendered physically unable and--as determined by Army medical personnel--permanently unqualified under Army regulations to perform his normal duties as military policeman, is entitled to disability pay and allowances during period of disability ending when Army authorities acted to change his Military Occupation Specialty from policeman to unit clerk, thus limiting his normal military duties to activities within range of his reduced physical capabilities. B-187049, November 9, 1976.

Member required to promptly report injuries and keep service advised of condition--In the implementation of the changes in the administration of the disability benefits program provided by the act of June 20, 1949, for National Guard members and other reservists, members should be advised to promptly report the incurrence of disability to enable the military services to provide proper medical and hospital care, as well as pay and allowances, to the disabled member. Where a member is not provided medical or hospital care so that a current determination of entitlement to pay and allowances cannot be made, any payment to a member should be supported each month by a report from his civilian physician and by a statement from the member showing the days of military duty or civilian employment together with the name and address of his employer. 52 Comp. Gen. 99 (1972).

Member not promptly seeking medical care--A member of the Army National Guard is entitled to pay and allowances under 32 U.S.C. 318 only if the injury, disease, and current disability status is promptly

reported so as to permit action to retire, separate, or refer his case to the Veterans' Administration. Where a member does not seek medical or hospital care by the Government for over 1 year so that a current determination of entitlement can be made, payment of pay and allowances for such period is not authorized. B-185415, August 4, 1976.

Member postpones treatment--A member of the National Guard may not by postponing treatment or examination extend the period of entitlement to full pay and allowances thus permitting the continued payment of such compensation when right thereto has not been clearly established by a showing of the continued disability. B-185404, August 2, 1976. See also 47 Comp. Gen. 716 (1968) and B-195470, November 14, 1979.

Rehospitalization from recurrence of original injury--The right to pay and allowances of a member of the Army National Guard under 32 U.S.C. 318 applies not only to the period of initial hospitalization and incapacitation resulting from a line of duty injury but also extends through any period of rehospitalization and incapacitation resulting from a recurrence of the original disability even though the recurrence occurred at a time when member was not in the line of duty. B-185439, August 3, 1976. See also 29 Comp. Gen. 535 (1950), 30 Comp. Gen. 185 (1950), and 39 Comp. Gen. 498 (1960).

Subsequent injury - intervening cause--Where record shows that Reserve member who is claiming entitlement to disability pay and allowances under 37 U.S.C. 204(g)(2) for injury sustained while on inactive duty training, was not medically examined prior to subsequent injury for which he claimed benefits as a civilian Government employee and prior to which he had lost no time from his military duty, subsequent injury should be treated as intervening cause, and since member fails to demonstrate that disability was direct result of injury sustained in line of duty, military disability pay may not be allowed. B-184867, August 3, 1976.

Member resumes civilian occupation while disabled--A non-Regular member of the Armed Forces who is disabled by injury incurred while performing active duty training may continue to receive the pay and allowances authorized by 37 U.S.C. 204(g)-(i) when

he resumes a civilian occupation, upon the determination, preferably by a service medical personnel and made in accordance with standards established for regular members, that the injury precludes the reservist from performing the normal military duties of his grade or rank, notwithstanding the member is

problems than those considered in 40 Comp. Gen. 618. A departure from the construction of the term "temporarily" as used in Executive Order No. 10821 to mean a period not in excess of 90 days is unwarranted, as the period of time during which facilities are temporarily out of operation within the meaning of the Executive order should not vary on the basis of the type of vessel involved, and also, the extent of the term should be the same for all members whether assigned to vessels or sub-marines. 42 Comp. Gen. 24 (1962).

C. Administrative Function Pay - Reserve

When a National Guard or Reserve component is not functioning as a separate unit but is a subordinate part of a larger group, the administrative functions of the organization are, for the most part, normally performed by the headquarters of the larger group. Consequently, in such cases, payment of administrative function pay must be supported by clear showing that commanders of the subordinate group units did in fact perform the administrative functions of their unit. B-147755, January 22, 1962. See also B-185426, January 19, 1976.

D. Hostile Fire Pay

Members missing in action

Payment of hostile fire pay to members captured or missing in action as a result of hostile action even though the members had not otherwise qualified for such pay immediately prior to that time, is not authorized under 37 U.S.C. 310 since the legislative history clearly establishes that Congress intended that the special pay not be paid to such members. 44 Comp. Gen. 532 (1965).

Member classified as a casualty

Only when a member is classified as a casualty as the result of hostile fire action may he be paid hostile fire pay for a period not to exceed 3 months while hospitalized. 49 Comp. Gen. 507 (1970).

Cadets and midshipmen

Since cadets and midshipmen are not entitled to basic pay, they do not qualify for hostile fire pay

even though serving in an area subject to hostile fire. 47 Comp. Gen. 781 (1968).

Noncombat areas

The Combat Pay Act of 1952, which was repealed by section 9(b) of Uniformed Services Pay Act of 1963, authorized special pay for members of combat units in Korea, provided they were in action for specified periods of time. In 1963, when the hostile fire pay of 37 U.S.C. 310 was authorized, the hostilities in Vietnam did not involve clearly distinguishable line of demarcation between friendly and enemy forces, as in Korea. Instead, there was the possibility of exposure to hostile fire in almost any area or location in Vietnam or in other areas of Southeast Asia. Thus, the concept of exposure to possible hostile activity was used as the basis for the special pay authorized in 37 U.S.C. 310, and is less restrictive in that respect than the Combat Duty Pay Act of 1952 which limited combat pay to combat troops in action. B-168403, March 3, 1975.

Entitlement to convalescent leave

Only a member who incurs an "illness or injury" while eligible to receive hostile fire pay is entitled to convalescent leave. B-195234, October 23, 1979.

IV. BONUSES

A. Proficiency Pay

Promotion

Enlisted to commissioned grade--Enlisted member Navy or Marine Corps at time of temporary appointment to commissioned officer grade was receiving proficiency pay is not entitled to saved proficiency pay unless he continues to meet the eligibility conditions prescribed by regulations. A member does not meet prescribed conditions of eligibility for proficiency pay when as part of his duties as an officer he utilizes the skills of his military specialty for which the pay was authorized in the supervision of other personnel with similar skills. 48 Comp. Gen. 12 (1968).

Eligibility for promotion--Regulations which prescribe eligibility for an award of proficiency pay on the basis of qualifying for promotion to the next

higher grade are regulations that are not consistent with the law and payments of proficiency pay in the superior performance category that do not relate to a member's current pay grade but on eligibility for promotion in grade may not be authorized.
48 Comp. Gen. 86 (1968).

made on an individual basis and an approved allowance supported by a written certificate or statement 52 Comp. Gen. 64 (1972). See also 57 Comp. Gen. 194 (1977); and B-187222, May 6, 1977.

Conclusiveness of certificate of nonavailability

Member without dependents who vacated Government quarters and secured private quarters of his choice was not entitled to BAQ, even though the installation commander provided him with a certificate of non-availability of quarters, since in fact adequate public quarters were available to him and the commander's certification was therefore not conclusive. 39 Comp. Gen. 561 (1960).

Quarters assigned before household goods arrive

Although 37 U.S.C. 403 provides for the payment of BAQ when because of orders by competent authority the dependents of a member are prevented from occupying assigned quarters, where the Government arranges for the movement of the household goods of an Army officer to family-type quarters designated adequate and the move is not accomplished by the effective date stated in the assignment orders, nevertheless payment of BAQ with dependents to the officer may not be continued beyond the effective date of the quarters assignment, as the transportation contract does not constitute the "competent authority" required to create entitlement to the allowance after the effective date of the assignment. 50 Comp. Gen. 174 (1970).

Family quarters available but dependents do not join member

Member who was assigned public family quarters but whose family later elected not to join the member at his new permanent duty station, was properly terminated from assignment to such quarters, and he then became entitled to BAQ as a member with dependents even though adequate Government quarters were available at the duty station. 48 Comp. Gen. 216 (1968). See also B-194795, March 6, 1980, 59 Comp. Gen. ____.

Quarters aboard ship while traveling

The fact that a member occupies accommodations aboard a ship as a passenger en route to his new permanent duty station does not affect his basic

allowance entitlement under 37 U.S.C. 403 in view of the rule that accommodations furnished members and their dependents while traveling incident to a change of station are not considered the equivalent of public quarters. 48 Comp. Gen. 40 (1968).

Occupancy of temporary quarters after PCS

Thirty-day rule, generally--The occupancy by member and his dependents of visiting officers quarters for a period of less than 30 days at his new permanent duty station while awaiting the assignment of suitable on-base housing does not deprive him of entitlement to a basic allowance for quarters for the period of the temporary occupancy, section 403 of Executive Order No. 11157, dated June 22, 1964, providing for such temporary occupancy without loss of basic allowance for quarters for a period not to exceed 30 days while a member is in a duty or leave status "incident to a change of permanent station," and the right to the allowance is not affected by a more than 2-year delay in moving to on-base housing, the temporary occupancy of the visiting quarters resulting from the movement of the officer's dependents incident to a permanent change of station. 45 Comp. Gen. 589 (1966).

Temporary occupancy of "rental" vs. "public" quarters--A member of a uniformed service may occupy temporary lodging facilities in excess of 30 days incident to a PCS transfer without loss of BAQ if a substantial "rent" for such quarters is charged to cover direct operating costs, loan repayment, repairs, etc., and which quarters are acquired and operated with nonappropriated funds. 56 Comp. Gen. 850 (1977).

B. Adequacy of Government Quarters

Voluntary occupancy of inadequate quarters

Member who voluntarily elects to occupy inadequate Government quarters should not thereafter be permitted to use their inadequacy as a basis for payment of BAQ. 40 Comp. Gen. 169 (1960).

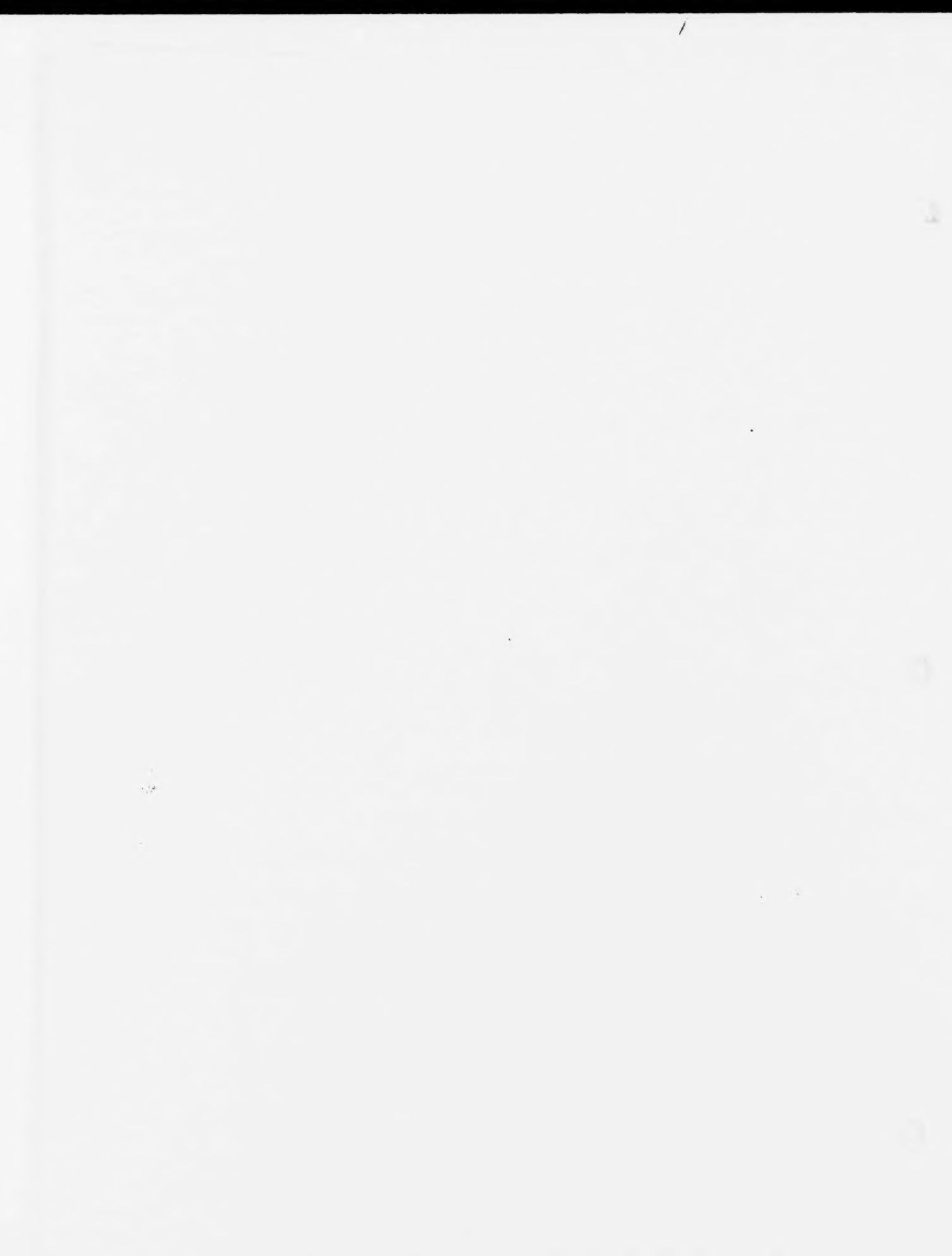
Members under confinement

Where a member is ordered into pretrial confinement in a guard house or brig and is subsequently either acquitted at the trial or convicted but with any sentence to confinement set aside, such pretrial

Government "quarters" may be considered neither adequate nor voluntarily occupied, and the member is entitled to BAQ for the period of confinement. 40 Comp. Gen. 169 (1960). But see also 40 Comp. Gen. 715 (1961).

Crew of two-crew nuclear submarines

Navy members without dependents attached to two-crew nuclear-powered submarines who are temporarily serving ashore for more than 15 days during periods of training and rehabilitation at a station where



quarters are inadequate for assignment to members on either permanent or temporary duty may be credited with BAQ. 47 Comp. Gen. 527 (1968).

C. Adequacy of Allowance when Quarters not Furnished

Generally

Where a member of a uniformed service stationed overseas incurs expenses for housing in excess of the amount authorized to be paid to him for BAQ and overseas station allowances, his claim for extraordinary expenses to cover the additional cost must be denied. No authority exists for payment of extraordinary expenses and a member may only be paid allowances for housing and living expenses authorized by law and regulations. B-195941, October 18, 1979.

D. Members Without Dependents

While on sea or field duty

The prohibition contained in 37 U.S.C. § 403(c) against payment of BAQ to members without dependents while on field or sea duty of 3 months or more applies to temporary as well as to permanent duty assignments. B-194807, May 27, 1980, 59 Comp. Gen. _____. See also 59 Comp. Gen. 192 (1980).

While occupying transient quarters upon transfer

Members without dependents under permanent change-of-station orders authorizing leave en route who occupy transient type quarters before departing the old station or upon arrival at the new station may be paid BAQ not to exceed 30 days of such occupancy whether or not in a leave status. 45 Comp. Gen. 347 (1965).

While traveling between permanent stations

To the extent that members without dependents are not assigned Government quarters while traveling, or during delays en route, they are entitled to BAQ from date of departure from the old station to the date of arrival at the new station overseas, including periods while in a per diem or group travel status for the overseas portion of the travel, the accommodations furnished during such travel not being

regarded as the assignment or occupancy of public quarters within the meaning of 37 U.S.C. 403(b). 48 Comp. Gen. 40 (1968).

Transfer between vessels having same home port

A transfer from one vessel to another where both vessels are home-ported in the same area not constituting a permanent change of station within the purview of Executive Order No. 11157; implementing 37 U.S.C. 403, and the transfer not coming within the exception contemplated by the Executive order, which permits the occupancy of Government quarters without loss of BAQ while a member is in a leave or duty status incident to a change of permanent station, members without dependents who occupy transient quarters incident to a transfer from one vessel to another in the same home port are not entitled to BAQ for the period of occupancy of transient quarters. 48 Comp. Gen. 40 (1968).

After basic training before permanent assignment

An enlisted member without dependents in pay grade E-4 (less than 4 years' service) or below while performing temporary duty between the date he completes basic training and the date he receives orders naming a permanent duty station to which he will report on completion of temporary duty is not in a travel status and is entitled to BAQ when Government quarters are not available to him while serving at the place of performance of his basic duty assignment, which may be regarded as his permanent station for this purpose. 53 Comp. Gen. 740 (1974).

"Partial BAQ" for single members assigned to public quarters

Generally--A member assigned Government single type quarters (barracks), who is therefore ineligible for regular BAQ under 37 U.S.C. 403(b) is entitled to "partial BAQ" under 37 U.S.C. 1009(d). 58 Comp. Gen. 136 (1978). See also 57 Comp. Gen. 194 (1977).

Assignment to family type quarters--A single member without dependents is not entitled to partial BAQ under 37 U.S.C. 1009(d) when assigned to family quarters since partial BAQ is intended to be paid to members not entitled to full BAQ who are assigned to low-value Government single quarters, not higher value family quarters. 56 Comp. Gen. 894 (1977).

E. Members With Dependents

Common-law marriage

Member who entered into a common-law marriage in Texas, where such marriages may lawfully be contracted, is legally married under Texas law and may claim his spouse as a dependent for increased BAQ purposes. B-186179, June 30, 1976. But a claim for BAQ at the with dependent rate based on a Texas common-law marriage is too doubtful to permit payment where there is conflicting evidence concerning whether the parties lived together pursuant to an agreement to cohabit as man and wife and held each other out to the public as husband and wife. B-191316, September 27, 1978.

Family evacuated to safe haven

Government quarters occupied--When the dependents of a member are evacuated under emergency conditions from assigned Government quarters at his permanent station and occupy Government housing facilities at a safe haven area, considered voluntary occupation of adequate quarters as the dependents are not required to occupy the quarters, nor is rent paid for the facilities, the member not having incurred any personal expense is not entitled to payment of BAQ for dependents in order to reimburse a member for the expenditure of personal funds, and the member, not entitled to BAQ, also is not entitled to a family separation allowance. 46 Comp. Gen. 869 (1967).

Same - short duration of evacuation--A member who must continue to maintain and pay rental for private housing in anticipation of the return of his dependents evacuated to Government housing facilities at a temporary safe haven for a relatively short period pending further transportation to a designated place, or return to the place from which evacuated, during which time he occupies single-type quarters at his permanent station, may continue to be credited with BAQ on account of dependents and family separation allowance until his dependents are authorized to return to the member's permanent duty station or

arrive at the designated place contemplated by applicable regulations. 47 Comp. Gen. 355 (1968).

Entitlement based on child support

General rule--Divorced service member assigned barracks quarters, but also paying child support for private living quarters for dependent children, is entitled to BAQ at "with dependent" rate since he has not been furnished Government quarters "for himself, and his dependents" under 37 U.S.C. 403. But if member remarries and is reassigned Government family quarters, entitlement to BAQ ceases even though child support obligation remains unchanged; member has then been furnished quarters "for himself, and his dependents," and fact that some dependents for personal reasons cannot join him in family quarters is no basis for continued BAQ payments. 48 Comp. Gen. 28 (1968). See also B-196840, August 25, 1980, 59 Comp. Gen. ____.

Showing that support is being paid--Member who gave his wife at the time of their divorce a promissory note for \$1,500 that was being reduced in the amount of \$30 per month was not entitled, in the absence of a definitive court decree requiring child support payments for the son born of the marriage, to BAQ for the child who was in the custody of his mother since the payments were not support payments and there was no showing any part of the monthly payments were used to support the child. 52 Comp. Gen. 454 (1973). Member whose former wife refused his child support payments not entitled to BAQ on behalf of child, even though member put payments in irrevocable trust with child as beneficiary. B-195383, November 6, 1979.

Member has legal custody but not control--Member who is given custody of his minor child at the time of divorce from his wife is not entitled to increased BAQ under 37 U.S.C. 403 on account of the child until he gains control of the child or contributes to the child's support, the purpose of section 403, is to partially reimburse members for the expense of maintaining private quarters for their dependents and not to grant the higher allowance as a bonus merely for the technical status of being married or a parent. 42 Comp. Gen. 642 (1963).

Supported children occupying Government quarters--A Navy officer who, pursuant to a divorce agreement,

contributes to the support of his children who live with the member's former wife and her second husband, an Air Force officer--in assigned public quarters is regarded as having his dependent children occupying public quarters to preclude payment of BAQ on behalf of the children. 44 Comp. Gen. 713 (1965). See also 58 Comp. Gen. 100 (1978).

Same - while member is in transient status--

A Navy officer contributing to the support of his children, who are occupying the public quarters assigned to their stepfather, an Air Force officer, is properly denied payment of BAQ on behalf of his children while on sea duty and after assignment of quarters at his new permanent station, but is entitled to payment of a quarters allowance for the period that he was in a leave and transient status between the sea duty and the furnishing of quarters at his new permanent station, an interim period during which he did not occupy public quarters. 45 Comp. Gen. 146 (1965).

Adopted children

The child adopted by a member under an interlocutory decree, followed by the issuance of a final order of adoption, the governing State statute providing that from and after the entry of the interlocutory order of adoption the child for all intents and purposes shall be the child of the person adopting him, may be regarded as the legitimate child of the member from the date of issuance of the interlocutory decree to determine her entitlement to a basic allowance for quarters under 37 U.S.C. 403. 44 Comp. Gen. 417 (1965).

Illegitimate children

An unmarried member who, although acknowledging the paternity of an illegitimate child and contributing to the support of the child, has not established a home in which his child lives with him as a member of his family, may not be credited with increased BAQ on account of the child, the law of the State of California, the place of birth of the child and the residence of all the parties requiring, in addition to acknowledging an illegitimate child, that a father receive the child into his family and treat the child as his legitimate offspring. 48 Comp. Gen. 311 (1968).

F. Women Members

Frontiero v. Richardson

Air Force member whose husband was a civilian not dependent upon the member for over one half of his support, was entitled to claim her husband as her dependent for purpose of obtaining increased BAQ. Frontiero v. Richardson 411 U.S. 677 (1973).

III. UNIFORM ALLOWANCES

A. Officers

Inclusion in back pay award

Air Force officer released from active duty on July 31, 1961, but who through judgment of the Court

of Claims became entitled to "back pay, less appropriate offsets," and to be credited with active duty service through July 31, 1969, did not become entitled to uniform allowances for such eight-year period, since he was not required to wear any military uniforms during that time. 53 Comp. Gen. 813 (1974). Officer retroactively restored to active duty by Board for correction of Military Records is not entitled to uniform allowance upon actual return to active service. B-195129, April 28, 1980.

For Ready Reserve service

A Ready Reserve officer, including a former Regular officer transferred to the Reserves, is entitled to the \$50 quadrennial reimbursement uniform allowance provided in 37 U.S.C. 416(a) if he has not become entitled to a uniform reimbursement or allowance as an officer during the preceding 4 years. 42 Comp. Gen. 550 (1963).

Extended active duty allowance

Relationship to initial allowance--Non-Regular officers who have not been paid the initial uniform allowance provided by 37 U.S.C. 415(a)-(c) are not precluded from entitlement to the extended active duty uniform allowance authorized by 37 U.S.C. 416(b), such allowance being "In addition to" the initial uniform allowance authorized. Also, the fact that a nonregular officer had not received the initial uniform allowance does not bar him from qualifying for the extended active duty allowance, 43 Comp. Gen. 729 (1964).

Relationship to quadrennial allowance--Notwithstanding 37 U.S.C. 416(b) provides that the extended active duty uniform allowance is "In addition to" the quadrennial allowance provided by subsection 416(a), a non-Regular officer may be paid the extended active duty allowance, the phrase "In addition to" not being a sound basis to conclude that the extended active duty allowance may not be paid unless a quadrennial allowance had been received. 43 Comp. Gen. 729 (1964).

On change from Regular to Reserve

An enlisted member of the Regular Marine Corps who when his temporary appointment as a Regular

commissioned officer under 34 U.S.C. 350a, at which time he received an initial uniform allowance of \$250, is terminated and he simultaneously is discharged as an enlisted member and accepts a permanent commission in the Marine Corps Reserve is not entitled to the \$100 additional active duty allowance provided by 37 U.S.C. 416(b), the member continued on an uninterrupted active duty career that makes him ineligible to receive an extended active duty uniform allowance upon initial entrance on duty as a Reserve officer. 44 Comp. Gen. 327 (1964).

On entering different service

A Marine Corps Reserve officer who, within 2 years prior to appointment and active duty in the Corps, had served on active duty for more than 90 days as an officer in the Air Force Reserve, may not be paid an additional uniform allowance under 37 U.S.C. 416(b) on the basis of requiring a different uniform, absent an administrative regulation implementing the authority in 37 U.S.C. 416(b) for payment of the allowance to a Reserve officer who requires a different uniform upon transfer to, or appointment in, another Reserve component. 45 Comp. Gen. 116 (1965).

Entrance on duty as non-Regular

The entrance on active duty as a non-Regular officer less than 2 years after release from active duty as a Regular officer or enlisted man, or as an enlisted member of a Reserve component does not deny the officer the extended active duty uniform allowance of \$100 that is in addition to the initial uniform allowance, the 2-year restriction in 37 U.S.C. 416(b) (2) barring payment when a tour of duty commences within 2 years after completing a period of active duty of more than 90 days' duration having reference to active duty ordered in a non-Regular officer status for more than 90 days. 43 Comp. Gen. 265 (1963).

B. Enlisted Members

Change from Reserve to Regular

Air Force Reserve enlisted member who was issued clothing to complete his initial clothing issue requirements upon his recall to extended active duty in 1968 and who did not turn in clothing incident to

his discharge from that duty for purpose of enlistment in the Regular Air Force in 1969, was not

entitled to an initial clothing monetary allowance at the time of Regular Air Force enlistment under the provisions of Chapter 5, Part Three, of the Department of Defense Pay and Allowance Entitlements Manual. B-184236, February 12, 1976.

Lost clothing allowance to survivors

Where enlisted member is furnished clothing or a monetary allowance in lieu thereof, and his military clothing is lost, damaged, destroyed, abandoned or otherwise rendered unserviceable and such loss was not caused by any fault or negligence on his part, he may maintain a claim for compensation for the loss. However, if the member is deceased, his survivors have no right to compensation for the loss, the right being personal and not extending beyond the member's life. 52 Comp. Gen. 487 (1973).

IV. DISLOCATION ALLOWANCE (DLA)

A. Permanent Change of Station

Ordered to change quarters, no PCS

Military members required to involuntarily relocate their households incident to base closings in Japan under Kanto Plain Consolidation Plan, without permanent changes of station, may not be paid DLA under 37 U.S.C. 407(a), nor may they be paid such allowance pursuant to 37 U.S.C. 405a since the relocations were not evacuations incident to unusual or emergency circumstances. 55 Comp. Gen. 932 (1976).

Payments based on alert notice not allowed

A member of the uniformed services who relocates his household incident to an official alert notification, but prior to the issuance of permanent change-of-station orders providing for his transfer to a restricted area overseas, is not entitled to payment of DLA prescribed by 37 U.S.C. 407 incident to the authorized move of dependents predicated on a member's permanent change-of-station orders, section 407 providing no authority for the payment of DLA in unusual or emergency circumstances. 46 Comp. Gen. 133 (1966).

Move off ship when quarters uninhabitable

The home port of vessel was changed and quarters aboard were declared to be uninhabitable due to reconstruction. Naval officer, without dependents, who had been quartered aboard vessel was required to obtain non-Government housing since other Government quarters were unavailable. The officer is not entitled to DLA allowance since for this purpose the permanent station of the officer is his ship, and not the home port, and the allowance is paid incident to a change of permanent station. B-184289, September 16, 1975.

B. Personal Reason For Changing Residence

Delayed move

An Air Force officer who more than 2 years after issuance of permanent change-of-station orders transferring him from a hospital assignment to the area where he had served as a ROTC Staff member and where his dependents continued to reside, moved his dependents to on-base housing as his presence was required on the base, is not precluded by the delayed move from entitlement to dependent travel and DLA no time limitation being imposed on the exercise of the right to dependent travel incident to a permanent change-of-duty station, and the fact the move was delayed for personal reasons pending the sale of the officer's house does not affect his right to move his dependents at Government expense during the period his orders remain in effect and prior to receipt of notice of a further change of station. 45 Comp. Gen. 589 (1966).

Family move not related to PCS

Navy member who had permanent change of station to a ship at Norfolk, Virginia, in July 1971 (subsequently at Philadelphia, Pennsylvania), and upon reassignment to another ship at Norfolk, Virginia, in February 1972, moved his dependents and relocated his household in November 1973, to a location 36 miles from his former residence and there is no showing that the move was necessary as the direct result of the permanent change of station, is not entitled to dependents' travel and DLA, nor to transportation of household effects at Government expense. B-183436, July 22, 1975. See also B-195941, October 18, 1979.

custody, care, and control of their children under a court order permitting them to visit with him during their summer vacation is considered to be a member without dependents within the meaning of the Joint Travel Regulations and, therefore, the fact that the children accompanied the officer when his permanent duty station was changed during their visit does not entitle him to reimbursement for their transportation or to DLA for the children since the travel of the children was not to establish a residence and neither their visiting status nor their residence was changed. However, since the officer was not assigned public quarters he is entitled pursuant to 37 U.S.C. 407 to DLA as a member without dependents equal to his quarters allowance for 1 month. 51 Comp. Gen. 716 (1972). See also B-197384, August 12, 1980.

Temporary court order pending divorce--Where at the time of member's permanent change of station, divorce action against member's wife was pending in the court, and the child was in the legal custody of the wife under temporary court order, member is entitled to DLA pursuant to 37 U.S.C. 407, as a "member without dependents" as defined by 37 U.S.C. 407(a) and the Joint Travel Regulations, since he would not be entitled to travel expenses of his dependents for the purpose of changing their place of residence and he was not assigned Government quarters. 53 Comp. Gen. 787 (1974). See also B-197144, July 22, 1980.

Informal agreement of spouse and modify custody--Payment of travel expenses and DLA to member incident to his dependent child's travel from where he was residing with his mother to the member's duty station is denied because divorce decree granted custody of child to the wife and wife's special power of attorney granting temporary custody of the child to the father without consent of the court is of no effect since parents lacked authority to modify the custody provision of the final divorce decree. B-186308, July 22, 1976.

F. To First or From Last Permanent Station

Permanent vs. Temporary duty

Whether an assignment to a particular duty station is temporary or permanent is a question of fact and is for determination from a consideration of the assignment orders and the character of the assignment.

Where member was ordered to active duty effective July 20, 1970; performed temporary duty at Fort Sam Houston, Texas, for approximately 5 weeks; then reported to his unit at Fort Bliss, Texas, on August 27, 1970; and proceeded to Europe on a unit move on September 2, 1970; the European assignment was his first permanent change of station, so that payment of DLA was precluded by 37 U.S.C. 407(c). B-176614, January 9, 1973.

Travel to separation station

DLA is not payable to a member ordered from his permanent station to a processing or separation station for discharge and who subsequently reenlists without a break in service and is assigned a new permanent station by orders issued at the point of reenlistment. 36 Comp. Gen. 71 (1956); 38 Comp. Gen. 405 (1958); B-135627, May 12, 1959.

Immediate reenlistment

An Army member who, subsequent to discharge and reenlistment overseas, remained at his overseas station sometime before returning to the United States for release but who, before the release was effected, was reassigned to new station in the United States may have the orders directing a release which was never accomplished regarded as a permanent change of station rather than a transfer to a separation point for discharge and a reenlistment which would preclude entitlement to DLA. Therefore, upon transfer to the new permanent duty station the member became entitled to DLA allowance. 43 Comp. Gen. 91 (1963).

Change from enlisted to officer status

An enlisted member who, after graduation from Officers' Training School - which was the member's temporary duty station during the instruction period - is discharged and appointed as an officer at the old permanent duty station, without a break in service, and immediately reassigned to a new permanent duty station may have the orders, which discharged him from the service to continue as an officer, regarded as a detachment from the old station and assignment to the new station and, therefore, DLA incident to a change of station is payable to the member along with the transportation allowance

Vessels with different home yards

Navy member was transferred from one vessel to another vessel, both homeported in New York City, but with respective home yards at Boston Naval Shipyard and Charleston, South Carolina. Incident to transfer dependents traveled from Detroit, Michigan, to East Meadow, New York. There is entitlement to DLA since permanent change of station, while between vessels homeported in the same city, was between vessels having different home yards not similarly located and since dependents performed authorized travel incident to that transfer. 54 Comp. Gen. 869 (1975).

I. Member Without Dependents

Nonavailability of quarters

Furnishing quarters not economical--A member without dependents who is transferred to a permanent station and furnished a certificate of nonavailability of Government quarters on the basis that it would be economically advantageous to the United States not to require him to occupy available quarters is entitled to DLA pursuant to the Joint Travel Regulations, implementing 37 U.S.C. 407(a). 52 Comp. Gen. 64 (1972).

Quarters aboard ship not inhabitable--Although a member without dependents who upon reporting to a submarine under permanent change-of-station orders is assigned quarters on board the submarine is not entitled to DLA authorized in 37 U.S.C. 407(a), he is entitled to the allowance if he reports to a nuclear-powered submarine that is undergoing overhaul or repair at its home port or home yard and quarters aboard the submarine are uninhabitable, if the member is not assigned quarters ashore, and lodging accommodations pursuant to 10 U.S.C. 7572(a) are not furnished him. 48 Comp. Gen. 480 (1969). See also 57 Comp. Gen. 178 (1977); B-197356, September 5, 1980, 59 Comp. Gen. ____.

Two crew nuclear submarines--A dislocation allowance may be paid to members without dependents of both the on-ship and off-ship crews of nuclear submarines, when they initially occupy permanent non-Government quarters at the new home port although the submarine is the permanent station for both crews. This is based on the view that Congress did not intend to

preclude payment of the allowance when a member is not able to occupy quarters assigned to him and does incur the expense of moving into non-Government quarters. 59 Comp. Gen. 221 (1980).

Without dependent status

Spouse and children do not move--An amendment of the Joint Travel Regulations permitting treatment of a member with dependents who are authorized to travel with him to his new permanent station but who in fact, do not travel to the new station, as a member without dependents for purposes of receiving dislocation allowance, is not prohibited by 37 U.S.C. § 407. 48 Comp. Gen. 782 (1969) and similar decisions will no longer be followed. B-196121, April 8, 1980, 59 Comp. Gen. _____. See also B-197545, September 4, 1980.

Parent does not move--The payment of DLA to an officer of the Army Nurse Corps as a "member without dependents" who is receiving a basic allowance for quarters as a member with dependents for her mother who will not join her at her new duty station where she was not assigned Government quarters depends on whether or not the mother resided with the officer at the old station. If she did not, the officer is entitled to a dislocation allowance pursuant to the Joint Travel Regulations in an amount equal to the applicable monthly rate of the quarters allowance prescribed for a member of the officer's pay grade without dependents, but if the mother did reside with her at the time of transfer, her entitlement to transportation for the mother precludes payment of the allowance even though the mother may not have changed her residence. 52 Comp. Gen. 405 (1973).

Children of divorced member--A divorced naval officer whose former wife was given legal custody, care, and control of their children under a court order permitting them to visit him during their summer vacation is considered to be a member without dependents within the meaning of the Joint Travel Regulations and, therefore, the fact that the children accompanied the officer when his permanent duty station was changed during their visit does not entitle him to reimbursement for their transportation or to DLA for the children, since the travel of the children was not to establish a residence and

neither their visiting status nor their residence was changed. 51 Comp. Gen. 716 (1972). See also B-197384, August 12, 1980.

J. Evacuation of Dependents

A member whose dependents, following evacuation from his overseas duty station to a temporary safe haven in Europe pursuant to 37 U.S.C. 405(a), again moved under orders authorizing further transportation to a place to be

Planned visit of over 3 months--If at the time dependents of members depart from their residence to visit the member at his permanent duty station it is contemplated that the visit will be for a period longer than 3 months, the visit is not considered to be of a temporary nature for continuation of FSA payments under 37 U.S.C. 427(a) and clause (1) of 37 U.S.C. 427(b) and, therefore, the FSA payments should be stopped on the date the dependents arrive at the member's permanent duty station. 43 Comp. Gen. 596 (1964).

Reinstatement of allowance after visit--When FSA payments to members are stopped because the visit of the member's dependents extends beyond 3 months, and later the dependents return home, the same conditions for payment of the FSA then exist as originally existed, and, therefore, FSA payments may be resumed from and including the date of departure of the member's dependents from the permanent duty station. 43 Comp. Gen. 596 (1964).

Some members of family visit--A member who, while being entitled to receive a family separation allowance under 37 U.S.C. 427(a) or 37 U.S.C. 427(b), clause (1), has some of his dependents visit him at or near his permanent duty station would not lose the right to entitlement to FSA on account of the dependents who do not visit him. 43 Comp. Gen. 332 (1963).

Children remain at family home--The fact that the members of the family of a member who is assigned to a restricted overseas area are separated, his wife and son traveling at personal expense to the restricted area, and remaining there for a period exceeding 3 months regarded as the maximum period for temporary visits, and his two daughters who were attending school remaining in the family household maintained in the United States by the member, does not deprive him of entitlement to payment of FSA under 37 U.S.C. 427(b)(1) on account of the daughters who, not entitled to Government transportation to the overseas duty station, continued to reside in the family household for the period his wife and son resided at or near his permanent overseas duty station. 45 Comp. Gen. 205 (1965).

Government quarters available

Lack of facilities at base--Member serving an accompanied overseas tour and assigned Government family quarters, who due to lack of U.S. facilities at his duty station chooses to locate his dependents 61 miles from his permanent duty station, is not entitled to FSA, Type I and II, since under 37 U.S.C. 427, those allowances may not be authorized when the separation from the dependents is for personnel rather than military reasons. B-182098, October 9, 1975.

Members married each other - single quarters--Female member, whose mother is a dependent, subsequently marries another service member while on permanent duty overseas, is entitled to FSA - Type I for her mother, while member is living off base in a common residence with husband, notwithstanding the availability of Government single quarters, since Government family quarters were not furnished to her and her husband. B-185813, July 13, 1976.

Evacuation from private housing--A member who must continue to maintain and pay rental for private housing in anticipation of the return of his dependents evacuated to Government housing facilities at a temporary safe haven for a relatively short period pending further transportation to a designated place, or return to the place from which evacuated, during which time he occupies single-type quarters at his permanent station, may continue to be credited

member's enforced separation from his family and FSA continues to be an item properly for inclusion in the computation of the saved pay of a Navy or Marine member temporarily appointed a commissioned officer. 46 Comp. Gen. 57 (1966).

Duty aboard ship (FSA-S)

Ship in port near home port--Navy members assigned in excess of 30 days to ship overhaul at the Norfolk Naval Shipyard, located 3 miles from home port, Norfolk, Virginia, who had the option to move their families at Government expense to the Norfolk area, but chose not to do so, are not entitled to payment of FSA provided by 37 U.S.C. 427(b)(2) as they have no greater right than those members who had moved their families to the vicinity of Norfolk, since they continued to reside with their dependents. The fact that a member did not move his family to the vicinity of Norfolk in anticipation of extended sea duty gives him no vested right to the allowance since frequent changes, often at short notice, are an incident of military service. 52 Comp. Gen. 912 (1973).

Visits home while aboard ship--Navy members who travel during 48 hours of liberty, 72 hours if a holiday is involved, from the place of ship overhaul to the home port of the ship to visit dependents and return at Government expense pursuant to Public Law 91-210, do not forfeit entitlement to the \$30 per month FSA type II, authorized in 37 U.S.C. 427(b). The legislative history of Public Law 91-210, enacted as beneficial legislation to permit members to travel at Government expense from a place of vessel overhaul to home port to visit dependents, evidences no intent to deprive a member of other benefits by reason of a short visit with dependents on the usual type of Navy liberty. 50 Comp. Gen. 334 (1970).

On leave or hospitalization--A member who, while on duty aboard a ship away from the home port for which FSA is authorized under 37 U.S.C. 427(b)(2), is assigned to temporary duty, or is hospitalized ashore, or is on authorized leave is regarded as in an enforced separation status from his family even though he is not physically performing duties on board the ship and, therefore, entitlement to FSA under 37 U.S.C. 427(b), clause (2), would continue during such periods while the ship remains away from

its home port and while on authorized leave not in excess of that for which he is entitled to pay and allowances. 43 Comp. Gen. 332 (1963).

Temporary duty (FSA-T)

Visit of dependents--A member who has his dependents visit him at or near the temporary duty station to which he is assigned for more than 30 days may not have the residence with his dependents regarded as a mere visit to be entitled to payment of FSA authorized under 37 U.S.C. 427(b), clause (3), for temporary duty of more than 30 days since a 31-day minimum period of temporary duty is required for entitlement and the maximum period of temporary duty is generally not in excess of six months. 43 Comp. Gen. 332 (1963).

Some dependents visit--A member of the uniformed services who, while being entitled to receive FSA for temporary duty of more than 30 days under 37 U.S.C. 427(b), clause (3), has one or more of his dependents visit him for an extended period would not be regarded as losing his right to FSA by reason of the dependents who do not visit him. 43 Comp. Gen. 332 (1963).

Return from TDY on weekends--A member who, while on temporary additional duty away from his permanent station for more than 30 days, returned on weekends to his permanent station where his dependents lived and where he participated in flights as a crew member, may not be regarded as having been on temporary duty away from his permanent station for a continuous

period of more than 30 days for FSA payments under 37 U.S.C. 427(b)(3). 43 Comp. Gen. 755 (1964).

VI. OVERSEAS STATION ALLOWANCES

The allowances covered by this section are payable as per diem under 37 U.S.C. 405, however, travel per diem for the member is covered in Chapter 4 while allowances incident to permanent assignment overseas are covered in this section.

A. Housing and Cost-of-Living Allowances - (HOLA and COLA)

Basic authority and entitlement

Authority for payment--In prescribing a supplemental housing allowance for members stationed outside the United States, 37 U.S.C. 405 makes no provision for separate housing and cost-of-living allowances, but rather authorizes "a per diem, considering all elements of the cost of living." Therefore, the proposed supplemental housing allowance regulation should prescribe different per diem rates at a given station on the basis of different costs incurred by different groups of military personnel, including groups who incur higher or lower than average excess costs. However, until the formula for computing housing allowances can be revised, and the allowances for each overseas location computed on the revised formula, the computation and payment of the present regular housing and cost-of-living allowances may continue. 47 Comp. Gen. 333 (1967).

Adequacy of allowances--Where a member of a uniformed service stationed overseas incurs expenses for housing in excess of the amount authorized to be paid to him for BAQ and overseas station allowances, his claim for extraordinary expenses to cover the additional cost must be denied. No authority exists for payment of extraordinary expenses and a member may only be paid allowances for housing and living expenses authorized by law and regulations. B-195941, October 18, 1979.

Advance payment prohibited--Joint Travel Regulations may not be amended to allow advance payment for station housing and similar allowances paid under 37 U.S.C. 405, as the advance payment authorization in section 303(a) of the Career Compensation Act of 1949 as amended, 37 U.S.C. 404(b)(1), is limited to

payments for the member's travel, which does not include station housing allowance. Therefore, in the absence of specific statutory authority for advance payment of such allowances, 31 U.S.C. 529 precludes such advance payments. 56 Comp. Gen. 180 (1976).

Per diem basis--The payment of a higher housing per diem rate to members for the first 2 months of entitlement after entering on an overseas tour of duty and a lower rate for the remainder of the tour for the purpose of accelerating the reimbursement of moving-in expenses would constitute an advance payment of that portion of the per diem allocable to the accelerated reimbursement, and such a payment is not within the contemplation of 37 U.S.C. 405 authorizing a per diem that considers all elements of the cost of living to members stationed outside the United States, regardless of when costs may have to be paid. Therefore, the proposal to establish two housing allowance indexes, one applying for the preponderance of a member's tour which would reflect recurring costs and one applying during the first 2 months of the tour which would reflect the inclusion of the nonrecurring expenses may not be legally adopted. 47 Comp. Gen. 362 (1968).

Need for implementing regulations--A member who incident to orders directing attendance at a course of instructions in the Tokyo, Japan, area in 1965, may not be paid per diem, the November 8, 1954 determination by Headquarters, Far East Air Forces that per diem is not payable to its personnel for travel and temporary duty performed within the area involved never having been rescinded. Notwithstanding conditions of travel and temporary duty in the Tokyo area may have changed, the 1954 restriction authorized by 37 U.S.C. 405 does not permit payment of the per diem claimed. 47 Comp. Gen. 131 (1967).

Regulations clearly erroneous--When a regulation is issued based on obvious administrative error, it may be adjusted retroactively to correct the mistake. Therefore, when a station housing allowance was inadvertently deleted from an active duty station, based on information that no personnel were assigned there when in fact that was not the case, the regulation may be retroactively corrected to reinstate the allowance. B-192040, August 7, 1978, see also 56 Comp. Gen. 1015 (1977).

Entitlement to allowances--Where a housing allowance was authorized by regulation for St. Mawgan, England, member stationed there is unable to secure Government housing was entitled to the allowance, except for any period when he was entitled to a temporary lodging allowance, B-184460, February 25, 1976.

Dependent status - stepchild--Member was entitled to transportation and cost-of-living allowances on account of his two stepchildren incident to his assignment to Alaska, despite the fact that the natural father was also a member and was vested within a primary entitlement to a quarters allowance credit for the children because of court ordered support payments, since there was no duplicate credit of allowances involved in the matter. 43 Comp. Gen. 690 (1964). See also B-197384, August 12, 1980; B-196727, May 20, 1980.

Permissive orders for overseas assignment--Since members arriving at new permanent duty stations overseas under permissive travel orders issued at their request for personal convenience are required to pay their own travel and transportation expenses under such permissive orders, the temporary lodging allowance, which is in substance a continuation of the travel per diem to reimburse the members for more than normal expenses directly attributable to the change of station, are not payable; however, housing and cost-of-living allowances, which are based on average costs normally incurred on permanent duty overseas, are to be distinguished from costs incident to the change of station and such allowances are payable to the members. 43 Comp. Gen. 584 (1964).

cost-of-living allowances authorized under 37 U.S.C. 405 and the Joint Travel Regulations notwithstanding the fact the submarine is the permanent station of the members and housing and cost-of-living allowances are payable only at permanent station, since Congress did not intend to preclude payment of such allowances to members actually experiencing higher cost for housing and cost of living. 53 Comp. Gen. 535 (1974). See also 57 Comp. Gen. 178 (1977).

Same - While on shore due to injury--Member was on permanent duty on vessel home-ported at Pearl Harbor, Hawaii, when he was injured and ordered to temporary duty for medical treatment at Pearl Harbor. Since those orders for treatment did not effect a permanent change of station and since the member continued to reside in non-Government quarters he is eligible for station housing and cost-of-living allowances. B-181893, September 16, 1975.

Dependents at other duty station

Member's transfer to CONUS--A Coast Guard member's dependents remained in Hawaii, when the member was transferred on permanent change of station orders to Cleveland, Ohio. The member is not entitled to continued payment of station allowances under 37 U.S.C. 405 (1976) in the absence of an emergency preventing dependents from leaving the overseas station since the dependents' residence in the overseas area has no connection with the member's duty assignment. B-196694, December 12, 1979.

Designated place overseas--A member who incident to a permanent change of station to a restricted area overseas to which his dependents are not authorized to accompany him, elects to move his dependents from his old duty station in the U.S. to a designated place in Alaska, Hawaii, Puerto Rico, or any territory or possession of the U.S. - in fact to any place outside the U.S. - may not be paid station allowances temporary lodging, housing, and cost-of-living allowances - as the dependents move overseas would be a personal choice, separate and apart from the member's overseas duty. and while residing overseas would not be in a military dependent status. 49 Comp. Gen. 548 (1970). See also B-195570, May 15, 1980.

Consecutive overseas assignments--A Marine Corps member with dependents was transferred from duty in

continental United States to restricted duty (dependents prohibited) overseas. His orders stated the intention of the Commandant to reassign him to Hawaii after completion of his restricted duty assignment. Member's dependents moved to Hawaii concurrent with the member's restricted duty assignment and the member now claims station allowances for dependents under 37 U.S.C. 405 (1970). Since such move may be viewed as having a connection with the member's duty assignment, the Joint Travel Regulations may be amended to authorize station allowances in such cases. However, this member's claim may not be paid because current regulations clearly prohibit it. 56 Comp. Gen. 525 (1977).

Station reclassified as restricted area--Where a member lives with dependents in the vicinity of his duty station outside the United States, and the duty station is reclassified as a restricted area so as to require that dependents be relocated to another designated place outside United States, or in Hawaii or Alaska, GAO has no objection to a proposed amendment to the Joint Travel Regulations to provide for station housing and cost-of-living allowances while dependents reside at the new designated place and the member remains at the restricted duty station. B-193787, February 5, 1979.

Member at remote Alaska post--A member who was assigned from CONUS to a remote and isolated post in Alaska and his dependents were authorized to travel in a military status to another Alaskan location where dependent facilities exist, and to which location the member made periodic visits, does not make the member eligible to receive station allowances, and the principle enunciated in 49 Comp. Gen. 548 is for application, for the choice of an Alaskan location for dependents in lieu of a residence in CONUS does not change the member's "all others" tour of duty to an "accompanied by dependents tour." 53 Comp. Gen. 339 (1973).

Pending effective date of home port change--Members assigned to vessels having two rotating crews, whose dependents arrive overseas between the date of the official announcement of the change in home port of a vessel from the United States to an overseas port and the effective date of change, may not be paid station allowances for dependents under 37 U.S.C. 405, which while authorizing travel and temporary duty and permanent station allowances

for members on duty outside the United States, Hawaii, or Alaska, considers dependents only for permanent station allowance purposes. Although the vessel to which assigned is the permanent post of duty of a member, his permanent station for transportation of dependents and household effects is the home yard or port of the vessel. Therefore, absent designation of such a station outside the United States within the contemplation of 37 U.S.C. 405 for entitlement to station allowances until a change of home port becomes effective, the Joint Travel Regulations may not be amended to authorize station allowances to members for dependents arriving overseas prior to the effective date of a home port change. 45 Comp. Gen. 689 (1966).

Dependents visiting in U.S.--When a member remains at his permanent duty station outside the United States while one or more of his dependents returns to the United States for a visit, the cost-of-living allowance adjustment required by the Joint Travel Regulations may be waived if the absence is for 30 days or less. 37 U.S.C. 405, which authorizes the consideration of the cost-of-living element in prescribing the payment of a per diem, indicates no requirement to adjust cost-of-living allowances during absence of a member's dependents for short periods; and the waiver of the adjustment would be in harmony with the regulations implementing the cost-of-living allowances provided by section 221 of the Overseas Differential and Allowances Act, 5 U.S.C. 5924, for civilian employees of the Government. 50 Comp. Gen. 386 (1970).

B. Interim Housing Allowance (IHA)

The interim housing allowance which is authorized to members of the uniformed services under the Joint Travel Regulations and payable from the date the member procures non-Government family-type housing until the arrival of

the dependents is not regarded as a continuation of the travel per diem, and the fact that the transfer of the member is made under permissive orders which do not entitle the member to travel and transportation expenses does not bar entitlement to the IHA, and otherwise proper payments of such allowance under permissive orders will not be questioned. 43 Comp. Gen. 584 (1964).

C. Temporary Lodging Allowance (TLA)

General restrictions

On day of arrival - mileage payment--Reimbursement to a member for hotel expenses incurred on day of arrival at an overseas permanent station may not be authorized by amendment to the Joint Travel Regulations to provide payment of a temporary lodging allowance or mileage, whichever is greater. The member in a travel status on day of arrival at his overseas station is only entitled to travel allowances on that day, entitlement to a temporary lodging allowance (considered a permanent station allowance) commencing the day after arrival and, therefore, waiver of mileage entitlement by the member would not operate to entitle him to a temporary lodging allowance on the day of arrival. 47 Comp. Gen. 724 (1968).

FSA and TLA for same period--Upon the termination of the assignment of Government quarters at a permanent station overseas due to the closing of a military installation, a member in receipt of family separation allowance, type 1, under 37 U.S.C. 427(a) may, in addition, for the period prior to departure to his new station be paid a temporary lodging allowance in 10-day increments under 37 U.S.C. 405, the allowances not considered as a duplicate of each other. 47 Comp. Gen. 788 (1968).

Effect of permissive orders--Unlike housing and cost-of-living allowances which are based on average excess costs normally experienced by members on permanent duty outside the United States, the temporary lodging allowance is payable at a substantially higher rate, being based on the applicable per diem rate for the station involved and varying with the number of persons concerned. Thus, in substance, it is a continuation of the travel per diem, and consequently a member not entitled to reimbursement for travel

and transportation expenses incident to a permanent change of station under permissive orders, is not entitled to a temporary lodging allowance. However, such a member is not precluded from claiming IHA, HOLA, and COLA, if otherwise authorized. 43 Comp. Gen. 584 (1964).

Permanent change of station requirement

Upon return from long TDY--Temporary lodging allowance may be paid under current regulations on return to permanent station of a member without dependents who must give up his permanent housing while on temporary duty away from his permanent station for extended periods. However, it may be prudent to amend the regulations to specifically provide guidelines for payments of TLA in this situation. TLA may be authorized regardless of whether the member actually loses entitlement to BAQ for the period of temporary duty, by being assigned to field or sea duty provided it is clear that the member reasonably anticipated loss of BAQ under the temporary duty deployment and that is the reason the member relinquished his quarters. B-194807, May 27, 1980, 59 Comp. Gen. ____.

Pending effective date of home port change--

When the dependents of members of the Navy assigned to vessel duty arrive in the vicinity of an overseas home port of the vessel and occupy temporary lodgings prior to the effective date of the change of the home port of the vessel from the United States to the overseas home port, the condition for entitlement to the temporary lodging allowance, which is in the nature of a permanent change of station emolument, has not been met until the new home port of the vessel becomes the member's permanent duty station on the effective date of the orders and, therefore, the members are not entitled to the temporary lodging allowance prior to the effective date of the change in the home port. 43 Comp. Gen. 505 (1964).

Two-crew submarine - prior to reporting aboard--

A member who incident to permanent change-of-station orders assigning him to duty on board a ship, occupies hotel or hotel-like accommodations with his family at the home port or is temporarily assigned to the off-ship crew of a two-crew nuclear-powered submarine, is not eligible to receive the temporary lodging allowances prescribed by 37 U.S.C. 405 as

a permanent station allowance to partially reimburse a member for the more than normal expenses incurred upon arrival at a permanent station outside the United States. Therefore, as a member is not considered to be at a permanent duty station for the purposes of the temporary lodging allowance until he reports aboard the vessel to which assigned, the Joint Travel Regulations may not be amended to authorize payment of the allowance to a member prior to reporting aboard ship. 48 Comp. Gen. 716 (1969).

Advance return of dependents--The temporary lodging allowance payable to a member of the uniformed services on the basis he incurs more than normal expenses for the use of hotel accommodations and public restaurants for a prescribed period

immediately preceding departure from an overseas station on a permanent change of station may not be authorized incident to the advance return of a member's dependents under 37 U.S.C. 406(e) and (h), as the temporary lodging allowance is a permanent station allowance that may not be used to supplement the transportation allowances prescribed by subsections 406(e) and (h) for the movement of dependents, baggage, and household effects in unusual or emergency circumstances, or when the Secretary concerned determines the movement is in the best interest of the member, his dependents, or the United States without regard to the issuance of change-of-station orders. 50 Comp. Gen. 83 (1970).

Station reclassified to restricted--Where a member of the uniformed services lives with his dependents in the vicinity of his duty station outside the United States and the duty station is reclassified from nonrestricted to restricted thereby requiring the dependents to be relocated to a designated place outside the United States or in Hawaii or Alaska, the Joint Travel Regulations may be amended to provide the member a temporary lodging allowance for his dependents at the new designated location. To the extent this conflicts with 50 Comp. Gen. 83, that decision will no longer be followed. B-193787, March 31, 1980, 59 Comp. Gen. ____.

Dependents accompany member on hospitalization--The entitlement of an injured member, when prolonged hospitalization or treatment is anticipated, to the transportation of dependents and household effects is no basis to authorize payment of a temporary lodging allowance incident to the evacuation of his dependents occasioned by his injured status, unless the movement of the dependents and household effects is in connection with an ordered permanent change of station for the member. 49 Comp. Gen. 299 (1969).

After assignment on unaccompanied tour--A member authorized station allowances for dependents, continuing to reside in the vicinity of his old overseas duty station when he was reassigned to a restricted overseas duty station, may be paid a temporary lodging allowance on account

of his dependents who occupied hotel accommodations after vacating permanent living accommodations and shipment of their household effects incident to the member's transfer to the United States, even though he was not at his old overseas station when the transfer orders were received. 43 Comp. Gen. 525 (1964).

Government quarters available

Temporary quarters available but not used--An officer transferred to an overseas duty station who, notwithstanding the availability of Government quarters considered adequate for temporary occupancy, chooses to stay at a hotel until permanent quarters are assigned to him is not entitled to payment of a temporary lodging allowance for the period that he occupies hotel accommodations on the basis that the quarters offered were declared inadequate for permanent occupancy unless voluntarily accepted, and the member having declined to utilize the quarters made available to him, considered adequate for temporary occupancy, is unable to support entitlement to the temporary lodging allowance prescribed by the Joint Travel Regulations for members who when not furnished Government quarters secure temporary lodgings and occupy hotel or hotel-like accommodations. 44 Comp. Gen. 515 (1965).

Visiting officer's quarters--Member who occupied visiting officer's quarters (VOQ) during July 14-August 25, 1970, incident to permanent change of station, is not entitled to temporary lodging allowance (TLA) since at that time the VOQ was considered a Government appropriated fund activity, the occupancy of which under then applicable regulations precluded TLA. Fact that VOQ was changed to a nonappropriated fund activity effective November 1, 1970, in which case partial TLA is authorized, would not provide retroactive entitlement for prior periods since real changes in accounting and operations of VOQ were required and made when change in status of VOQ occurred. B-184846, March 1, 1976.

Commander's determination necessary

Need for occupancy of hotel quarters--Where there was nothing to show the overseas commander had made a determination that temporary lodgings

were necessary incident to a member's permanent change of station in Italy, and there was uncertainty as to the effective date of the permanent change of station orders and the proximity of the old duty station to the new duty station, TLA was not payable. 45 Comp. Gen. 510 (1966).

Decision to discontinue allowance--A member who was paid temporary lodging allowance for 36 days of the initial 60-day period after arrival of his dependents in Taiwan but was denied this allowance for the remaining 24 days of the initial 60-day period by the overseas commander on the basis that the member's actual expenses

VII. OTHER ALLOWANCES

A. Recruiting Expense Allowance

Added cost of automobile insurance

Although under 37 U.S.C. 428 and the implementing regulations a member whose primary assignment is to perform recruiting duty may be reimbursed for actual and necessary expenses incurred in connection with the performance of those duties, a recruiter is not entitled to reimbursement by the Government for the increased cost of extended insurance coverage incurred in connection with the use of a privately owned automobile in the performance of duties, since the cost of automobile insurance, like the cost of fuel, oil, repairs, and depreciation, is one of the expenses of operating an automobile which expense is reimbursed to the member through the separate mileage allowance. 54 Comp. Gen. 620 (1975).

Luncheons for groups of school officials

Provisions of 37 U.S.C. 428 and the Joint Travel Regulations authorize reimbursement of out of pocket expenses--including occasional meals--incurred in performance of official duties by recruiting officers from appropriations available to Marine Corps, do not appear to contemplate luncheon expenses incident to preplanned presentation to eleven public school officials who may assist recruiters. While we will not object to payment of subject voucher, similar expenses should not be incurred unless the regulations are revised to authorize them. B-162642, August 9, 1976.

B. Lodging Costs Under 10 U.S.C. 7572

Generally

A Navy officer, without dependents, not entitled to basic allowance for quarters obtained quarters in the private sector when quarters aboard the ship to which he was assigned became uninhabitable because of repairs. Government quarters at a local Navy base were available although they had been declared "substandard - incapable of being made adequate." The officer is not entitled to reimbursement for obtaining quarters under 10 U.S.C. 7572(b) (1976) since there was no certification that Government quarters were not available.

B-196628, December 19, 1979. See also 48 Comp. Gen. 480 (1969); B-197356, September 5, 1980, 59 Comp. Gen. ____.

C. Allowances Not Included

In addition to the allowances heretofore discussed, the statutes authorize payment of a variety of other allowances designed to reimburse personnel for expenses incurred in participating in certain activities or in fulfilling the responsibilities of specified positions. Included are special provisions for members participating in international sports (37 U.S.C. 419), and band concert tours (37 U.S.C. 425); allowances for band leaders (37 U.S.C. 207, 424), contract surgeons (37 U.S.C. 421), and certain high ranking officers (37 U.S.C. 414). Another statute (5 U.S.C. 5943) authorizes a foreign currency depreciation allowance, the purpose of which is to meet losses sustained by members while serving in a foreign country due to the appreciation of foreign currency in its relation to the American dollar. No Comptroller General's decision on these allowances were found that were appropriate for inclusion at the time this manual was prepared.

VIII. STATUS OF MEMBER AS AFFECTING ENTITLEMENT

A. National Guard and Reserve Members

Basic allowances for subsistence and quarters
(BAS and BAQ)

Active duty for training--A member who away from home to perform active duty training at an installation where Government quarters and messing facilities are not available, in addition to entitlement to the travel and transportation allowances provided by 37 U.S.C. 404(a)(2) and (3), may be credited under the authority of 37 U.S.C. 404(a)(4) with BAQ and per diem without reduction, the restriction in 37 U.S.C. 403 to the payment of a quarters allowance when a member is not entitled to basic pay having no application to a section 404(a)(4) entitlement, and the Joint Travel Regulations not requiring a reduction in per diem while a reservist is entitled to quarters allowance. However, BAS prescribed by 37 U.S.C. 402(b) is not payable to an enlisted man receiving per diem and therefore subsisted at Government expense. 48 Comp. Gen. 301 (1968).

Active duty of less than 20 weeks--The training station to which a Reserve member without dependents is ordered to active duty for less than 20 weeks in a temporary duty status is his permanent station and the member performing his basic assignment at his permanent duty station is entitled to BAQ prescribed by 37 U.S.C. 403 while at the training station and the definition in the Joint Travel Regulations that a home or place from which a member of a Reserve component is ordered to active duty for training is his permanent duty station is not for application. 48 Comp. Gen. 490 (1969).

BAQ dependency certificates--Recertification of dependency certificates for entitlement to BAQ by members of the Army Reserves may be accomplished by the use of computer-generated listing. Further, such recertification may be made for a period exceeding 1 year where annual training cannot be programmed within 12 months of the prior training period. 51 Comp. Gen. 231 (1971), modified. 59 Comp. Gen. 39 (1979).

the station to which he is ordered for training duty to be considered as on temporary duty away from his permanent station for FSA, Type II, authorized under clause (3) of 37 U.S.C. 427(b), he may, because the assignment is in excess of 30 days, have the training station regarded as his permanent station for FSA, Type II, entitlement under clause (1) of section 427(b). 43 Comp. Gen. 650 (1964).

FSA, Type I - duty outside U.S.--The restrictions or limitations on the length of permanent duty assignments for reservists FSA, Type I, need not be applied to the beneficial FSA, Type I, provisions in 37 U.S.C. 427(a), for permanent duty outside the United States or Alaska, and, therefore, reservists who are called to active duty for training or other active duty outside of the United States or in Alaska for periods in excess of 30 days and who do not have any other station that can be regarded as their permanent duty station may be regarded as serving on permanent duty for entitlement to FSA, Type I, payments under 37 U.S.C. 427(a). 43 Comp. Gen. 650 (1964).

Overseas station allowances

TLA while on training in Europe--Officers of State Army National Guard who performed annual field training in Europe within the authority of 32 U.S.C. 502(a)(2) and 503 during a period Government quarters were not available and living accommodations had to be obtained at their own expense in nearby hotels, are not entitled to the temporary lodging allowances provided under 37 U.S.C. 405, the Joint Travel Regulations contemplating entitlement to the allowance only when members are permanently assigned to duty at a station outside the United States for performance of duty of an indefinite or extended period rather than a period of short duration, such as the duty performed by the officers; however, the Joint Travel Regulations may be amended to authorize payment of a temporary lodging allowance for future short periods of training outside the United States or in Hawaii or Alaska. 45 Comp. Gen. 794 (1966).

COLA while on Reserve duty in Alaska--The cost-of-living allowance authorized by the Joint Travel Regulations for the purpose of defraying the

average excess costs experienced by members on permanent duty outside CONUS is not payable to an Air Force Reserve officer ordered from his home in the United States to active duty training in Alaska for a 44-day period, and the fact that a member ordered to active duty training of short duration is entitled to certain allowances which are paid incident to a permanent duty assignment does not make a short duration assignment for active duty training permanent in nature. 45 Comp. Gen. 798 (1966).

HOLA and COLA for Alaska reservists--In view of the broad authority contained in 37 U.S.C. 405, Volume 1, Joint Travel Regulations, may be amended to authorize payment of station allowances at with or without dependent rates as appropriate to members of Reserve components who perform active duty for less than 20 weeks outside the United States or in Hawaii or Alaska and who reside permanently in those areas with their families (if any). 55 Comp. Gen. 135 (1975).

B. Husband and Wife Both Members

Basic allowance for quarters (BAQ)

Sham marriages--Two service members married each other for the admitted purpose of being allowed to live off base and being paid BAQ under a service policy which authorizes such a procedure to encourage the maintenance of the family unit when Government family-type quarters are not available. In such a case the members should be assigned single-type Government quarters, if available, which would discontinue BAQ payments since there is no family unit to maintain. B-195670, December 14, 1979.

Effect of Frontiero v. Richardson, 411 U.S. 677 (1973)--Although the Frontiero decision has no effect on the dependency status of service members married to each other as prescribed by 37 U.S.C. 420, since a member may not be paid an increased allowance on account of a dependent for any period during which the dependent is entitled to basic pay, the differential treatment accorded male and female members in assigning quarters requires amendment of Department of Defense Directive to prescribe entitlement to both male and female members to BAQ at the without dependent rate when adequate public quarters for dependents

are not available, notwithstanding the availability of adequate single quarters; to reflect that neither husband nor wife occupying Government quarters for any reason who has only the other spouse to consider as a dependent is entitled to BAQ in view of 37 U.S.C. 402; and to provide that when husband and wife are precluded by distance from living together and are not assigned Government quarters, each is entitled to BAQ as prescribed for members without dependents. 53 Comp. Gen. 148 (1973).

One member on excess leave--An Army captain, whose wife is authorized excess leave without pay and allowances for the period between being commissioned and reporting to her new duty station, during which time she is neither furnished nor occupies quarters in kind, may be paid an increased quarters allowance under 37 U.S.C. 403 on behalf of his wife for the period she was in excess leave status. The limitation in 37 U.S.C. 420 that a member may not be paid increased allowances on account of a dependent for any period during which that dependent is entitled to basic pay does not bar BAQ at the with dependent rate, since the wife was not receiving basic pay and her active duty status in itself is not determinative of the husband's entitlement. 47 Comp. Gen. 467 (1968).

Members occupying inadequate Government quarters--A husband and wife, members of the uniformed services in pay grades E-5 and E-4, respectively, each member in receipt of a basic allowance for quarters while occupying private quarters, when assigned inadequate Government quarters on a rental basis may continue under 42 U.S.C. 1594j(a) to receive the allowance as members without dependents. However, their combined allowances exceeding the allowance received by the usual military family - one member only in the service - occupying inadequate quarters, the reduction provided by section 1594j(a) when a rental rate exceeds 75 per centum of the quarters allowance may not be applied on the basis of the husband's allowance alone. The manner or from whom the rental charges are collected is immaterial under the landlord and tenant relationship. 48 Comp. Gen. 68 (1968).

Effect of sea duty for one spouse--Husband and wife who are both members of the uniformed services, have no dependents other than each other, and do not live in Government quarters, are both entitled to BAQ at the without dependent rate appropriate for their grades. However, when the husband goes on sea duty, his entitlement to BAQ ceases, and the wife does not thereby become entitled to BAQ at the increased with dependent BAQ rate. B-178979, October 23, 1974. See also 57 Comp. Gen. 194 (1977).

With dependent or without dependent rate--Female service member married to and residing with

male member who receives BAQ at the with dependent rate on account of children of a previous marriage is not entitled to BAQ at the with dependent rate for a child of the present marriage since, although this child is not claimed as a dependent by the other member, the child must be considered a dependent of the spouse who is receiving BAQ at the with dependent rate by virtue of other dependents and may not provide a basis for allowing both spouses to receive BAQ at the with dependent rate. 54 Comp. Gen. 665 (1975).

Separate households--A military member married to a military member occupies Government quarters with their dependent child. Upon a permanent change of station of the male member, the female member remains in Government quarters with the dependent child. Male member is not provided Government quarters at new station and claims BAQ at the with-dependent rate since he is paying child support to a former non-military spouse not residing in Government quarters with dependent children. The male member is entitled to BAQ at the with-dependent rate since his BAQ entitlement is determined independent of his military spouse where they do not reside in the same household. B-196840, August 25, 1980, 59 Comp. Gen. ____.

After divorce--An Air Force sergeant who contributes over one-half of the support of the daughter whose custody was awarded to her upon divorce from her husband, also a member of the uniformed services, may be paid BAQ with dependents from the date of the divorce, notwithstanding her former husband receives BAQ at the "with dependent" rate based on dependent children of a previous marriage and pays \$75 per month toward the support of the child born to their marriage, since her former husband does not receive an increased quarters allowance on account of their daughter. 52 Comp. Gen. 602 (1973). See also 58 Comp. Gen. 100 (1978); and B-189973, February 8, 1979.

"Partial BAQ" under 37 U.S.C. 1009(d)

Generally--A member of a uniformed service married to another member, who has no dependents other than his or her spouse, is entitled to "partial BAQ" under 37 U.S.C. 1009(d) when assigned to single-type Government quarters. However, such a member

assigned to family quarters is not entitled to partial BAQ. 56 Comp. Gen. 894 (1977).

Effect of sea duty for one spouse--A member assigned to sea duty who occupies Government family-type quarters assigned to his spouse when the vessel is in port is assigned to quarters on the vessel and is considered a member without dependents by virtue of 37 U.S.C. 420 (1970). Therefore he is not entitled to BAQ under 37 U.S.C. 403(c), and is entitled to partial BAQ authorized by 37 U.S.C. 1009(d). 57 Comp. Gen. 194 (1977).

Family separation allowance (FSA)

A member with no dependents, as his wife, his only dependent, is also a member of the service on active duty is not entitled to the family separation allowance (FSA-II) provided by 37 U.S.C. 427(b) because, notwithstanding the elimination from the section pursuant to Public Law 91-533 of the qualifying language for entitlement to FSA-II of the phrase "who is entitled to a basic allowance for quarters," the prohibition in 37 U.S.C. 420 against increasing a member's allowance on account of a dependent entitled to basic pay under 37 U.S.C. 204 precludes payment of the FSA-II. 51 Comp. Gen. 116 (1971).

Dislocation allowance (DLA)

Both spouses transferred--Where female and male service members are married and reside in the same household and incident to a change of permanent station for each member the household is moved and the members continue to reside in the same household only one dislocation allowance may be paid for such movement, and since the male member already has received such allowance the female member's claim

CHAPTER 4

MEMBERS' TRAVEL

I. BASIC ENTITLEMENT RULES

A. Orders Requirement

Necessity

The right of military personnel to reimbursement of travel expenses and the extent of such reimbursement is dependent upon the performance of official travel directed by competent orders. B-175211, March 31, 1972; B-182803, October 24, 1975.

Travel Status

Service members not in a travel status incurred personal expenses incident to their military duties during a snowstorm and seek reimbursement. The entitlement of members of the armed services to be so reimbursed for expenses incident to their military service is contained in title 37, United States Code. In the absence of specific authorization, there is no legal basis upon which this Office may authorize reimbursement. B-194499, October 31, 1979.

Competency

Verbal orders--A verbal order given in advance of travel and subsequently confirmed in writing giving the date of the verbal order and approved by competent authority will meet the requirements for written orders. Written orders confirming verbal orders, together with evidence showing that an emergency prevented the issuance of written orders may be accepted only if the written confirmatory orders, fully substantiated, are issued within a reasonable time thereafter. 43 Comp. Gen. 281 (1963); B-180646, September 3, 1974; 52 Comp. Gen. 236 (1972).

Travel required by duty assignment

Member of the Marine Corps travelled from his home in Springfield, Virginia, to Quantico, Virginia, in order to perform temporary duty. Member travelled without written temporary

duty travel orders issued in advance. Although 37 U.S.C. 404 requires travel to be authorized by written orders the fact that the travel was required by the member's duty assignment and that his travel was subsequently approved in writing by competent authority as being advantageous to the Government is sufficient to authorize his travel and entitle him to reimbursement under 37 U.S.C. 404. B-196049, April 21, 1980.

Invalid amendment of orders by verbal orders--Where original written orders are amended and the authority for the amendment is a verbal order without any date of the verbal orders or a showing that an emergency prevented the issuance of written orders such verbal order is not sufficient to meet the requirements of paragraph M2003-2 of the Joint Travel Regulations and is therefore unauthorized. B-191681, November 21, 1978.

Alert notice--An alert notice does not conform to the requirements of a competent change-of-station order. 46 Comp. Gen. 133 (1966).

De facto officer traveled without orders--An applicant for a commission in the Public Health Service (PHS), began performing the duties of a commissioned officer on July 1, 1977, prior to his being found fully qualified, and appointed as an officer effective July 12, 1977, by official personnel order. While he may be paid pay as a de facto officer for the period July 1-11, 1977, he is not entitled to allowances for travel performed without orders. B-192116, November 24, 1978.

Modification of orders after travel performed

In general--It is a well established rule that legal rights and liabilities with regard to travel allowances vest as and when travel is performed under orders and that such orders may not be revoked or modified retroactively so as to increase or decrease the rights which have accrued or become fixed, after the travel has already been performed. An exception to this rule has been recognized when an error is apparent on the face of the original orders, or all facts and circumstances surrounding the issuance of such orders clearly demonstrate that some provision which was previously determined and definitely intended had been omitted through

error or inadvertence in preparing the orders.
23 Comp. Gen. 713 (1944); 24 Comp. Gen. 439 (1944);
37 Comp. Gen. 627 (1958); 37 Comp. Gen. 683 (1958);
44 Comp. Gen. 405 (1965); 48 Comp. Gen. 119 (1968);
51 Comp. Gen. 736 (1972); and 55 Comp. Gen. 1241
(1976). B-199464, August 29, 1980.

Determination of "inadvertence" after orders
executed--Former commissioned officer of Public
Health Service who requested separation from the
service in abrogation of his agreement to serve a
specified period after being trained at Government
expense and who was advised that he would be
divested of travel and transportation allowance
benefits to home on separation, may not have
separation orders amended retroactively to
authorize reimbursement for these expenses, on
the basis of a subsequent administrative determina-
tion that his separation had been "inadvertent."
B-186036, January 26, 1977.

Error at time orders prepared clearly demonstrated--
The separation orders of a Public Health Service
officer, released from active duty upon the comple-
tion of his obligated term of service, must be
amended retroactively to authorize payment for
travel and transportation allowances, where it
is clearly demonstrated that the withholding of
these entitlements under the original orders was
the result of an erroneous assumption made when

those orders were prepared that the member had breached an agreement to remain on active duty. B-190458, January 26, 1978.

Fraudulent Claims

Part of Claim Fraudulent

The decision in 57 Comp. Gen. 664 (1978), holding that where a civilian employee submits a travel voucher wherein part of the claim is believed to be fraudulent, only the expenses for days for which fraudulent information was submitted should be denied, is applicable to military members and non-Government employees traveling pursuant to invitational travel orders as well. B-189072, November 27, 1979.

B. Official Business Requirement

General rule

The entitlement of a member of the uniformed services to travel at Government expense is for determination on the basis of whether the travel is performed on public business that is that the travel relates to the activities or functions of the member's service - or is performed solely for personal reasons. If before completing a temporary assignment, a member's assignment is changed by competent orders, as defined in the Joint Travel Regulations, because of the bona fide needs of the service, the fact that the change might also be beneficial to, or in accordance with the needs of the member, would not defeat his entitlement to the travel authorized incident to the change in assignment. 49 Comp. Gen. 663 (1970).

Travel expenses for personal business

The travel allowances authorized for members of the uniformed services are for purposes of reimbursing them for the expenses incurred in complying with the travel requirements imposed on them by the needs of the service over which they have control. Expenses of travel for personal business and not performed on public business are not authorized as reimbursable expenses. B-191681, November 21, 1978.

Circuitous route for personal convenience

Expenses of circuitous travel performed by a member of the uniformed services for his personal convenience may be reimbursed only in an amount not to exceed the amount for the cost of travel between the member's duty stations via the most direct route. B-191681, November 21, 1978.

Education activities

Orders issued at member's request--An Army officer who performed travel and temporary duty incident to orders issued at the officer's personal request that he be temporarily assigned to the Armed Forces Institute of Pathology at Washington, D.C. and later to St. Louis to take the American Board of Pathology examination, was not on public business so as to be in a travel status during such period within the contemplation of the travel and transportation allowance provisions of paragraph 3050 of the Joint Travel Regulations and is not entitled to payment of travel and transportation allowances. 33 Comp. Gen. 196 (1953). See also 57 Comp. Gen. 201 (1978).

Orders canceled after registration fee paid--Member was advised of cancellation of temporary duty orders to attend pediatrics course in Hollywood Beach, Florida, prior to his travel there but after having paid registration fee. He may not be reimbursed for travel costs incurred in attending said course during administrative absence under permissive orders nor may he be reimbursed for registration fee absent showing fee would have been forfeited had he not attended course. B-186250, November 4, 1976.

School transfer during leave of absence--Officer, detailed to Judge Advocate General's Corps upon permanent change-of-station orders with excess leave granted without pay and allowances for purpose of attending law school, may not be reimbursed for travel and transportation expenses incurred incident to reassignment at officer's request for purpose of changing law schools since regulations provide that orders permitting member to travel, as distinguished from directing member to travel, do not entitle him to expenses of travel, nor can expenses incurred during periods of travel under orders which do not involve

public business be paid by Government. B-172848, July 27, 1971.

Sports activities

Specific legislative authorization required--

Although Defense appropriation acts specifically provide funds for travel of military personnel who attend regional, national, and international marksmanship competitions, and 10 U.S.C. 717, authorizes, by implication, expenditures for travel and transportation expenses of members who participate in international amateur sports competition or in Pan-American and Olympic Games, such acts do not indicate that public funds may be expended for any travel not incident to the performance of public business except as specifically authorized by law; hence, an Army regulation which purports to authorize payment of travel expenses of members participating in Army sports programs is invalid, and credit in the accounts of disbursing officers for payment of travel expenses and per diem under such regulation must be withheld. 38 Comp. Gen. 873 (1959).

Team members not "command supervisors"--Air Force members who in connection with sports programs attend coaches' and officials' training schools under temporary duty orders designating them as command supervisors are not entitled to per diem and transportation payments, even though Air Force Regulation authorizing sports programs, provides travel and per diem expenses for a command supervisor who is in charge of a sports team, the members having been assigned to teams for training and not to assume command, and the mere designation on the travel orders of the members as command supervisor, absent performance of that duty, does not entitle them to travel at Government expense; therefore, the temporary duty of the trainees not constituting public business as contemplated in the Joint Travel Regulations, appropriated funds may not be used to pay the travel and per diem expenses of the members. 42 Comp. Gen. 233 (1962).

Award ceremonies

The Secretaries concerned may issue regulations authorizing the payment of travel and transportation expenses of civilian employees of the

Department of Defense and military members who
travel on temporary duty to receive non-Federally

language of statutory provision which provides for this entitlement in connection with a "change of permanent station to another duty station." 55 Comp. Gen. 284 (1975).

Delayed leave--There is no objection to a proposed revision of Volume 1 of the Joint Travel Regulations to grant leave entitlements under 37 U.S.C. 411b, where because of the critical nature of the member's job he is not authorized leave travel between permanent station assignments provided such travel takes place within a reasonable time following the change of station, and entitlements do not exceed those provided if travel had occurred between assignments. 55 Comp. Gen. 284 (1975).

Return from leave to duty abroad

Where Army member was issued transportation request upon showing he was without funds to purchase necessary transportation for return to his overseas duty station at end of period of leave, member was not entitled to reimbursement of cost of commercial transportation used in connection with emergency leave, regulations expressly prohibiting such reimbursement for travel by commercial means, and reimbursement also being prohibited in connection with ordinary leave since it is not on public business. B-180810, October 9, 1974.

Presence of dependents in vicinity of restricted overseas station

Transportation expenses are authorized for members of the uniformed services in connection with authorized leave between unrestricted and restricted tours of duty overseas. They may receive such allowances where their dependent wives were transported at Government expense to a designated place in the U.S., subsequently left the designated place and joined the member in the vicinity of the restricted overseas duty station at personal expense and were there when the member was notified of permanent change of station to a consecutive overseas duty station since the dependents had established residences at the designated location to which they returned and to which the members traveled to assist in disestablishing that residence. B-195643, April 24, 1980.

Convalescent leave

Ill or injured while entitled to hostile fire pay--

A member of the uniformed services who travels from his convalescent leave site to a medical treatment facility other than the one that granted the convalescent leave incident to an illness or injury incurred while receiving hostile fire pay may be authorized return transportation at Government expense pursuant to 37 U.S.C. 411a. To restrict a member's return to the facility from which departed is not required in view of the apparent beneficial intent of the 1967 act to relieve a member of the travel expenses incurred incident to convalescent leave, and the governing regulations may be amended accordingly. 49 Comp. Gen. 427 (1970).

Not entitled to hostile fire pay--A member of the uniformed services is granted convalescent or sick leave while recuperating from surgery and Although released from the hospital is restricted as to the distance he may travel while on leave. Member is not entitled to per diem or reimbursement for expenses incurred while on sick leave. B-194234, October 23, 1979.

Determination of availability

Factors for consideration--A member of the uniformed services at a temporary duty or delay point where a Government mess is determined not to be available because of the distance between lodgings and the mess location, or because of the incompatibility of mess hours with duty hours, may be paid per diem at a rate authorized when a Government mess is not available on the basis that a member in a travel status is not required to use inadequate facilities, unless a military necessity, and distance is a factor in determining the impracticability of utilizing a Government facility. 52 Comp. Gen. 75 (1972).

Member's erroneous belief that available quarters inadequate--Member on TDY assignment who was informed that double occupancy of Government quarters would be required, and who then secured commercial quarters based on his erroneous belief he was entitled to single quarters and that Government quarters available were therefore inadequate, was properly denied certificate of nonavailability of Government quarters and was properly paid per diem at reduced rate. B-174495, March 7, 1972.

Quarters and mess available despite contrary statement in orders--Member whose TDY orders stated: "Government quarters and messing facilities will not be available (at TDY station)" was properly paid per diem at reduced rate and denied statement of nonavailability by TDY station commander, where such facilities were actually available. Since installation commander or other responsible officer at TDY station has duty to assign available and suitable Government quarters, we have accepted determination by such officer unless, clearly, it is not in accord with actual circumstances. B-178537, July 13, 1973.

Certificate of nonavailability revoked after TDY completed--Where order issued by TDY station commander authorized member to mess separately for the reason: "mess unavailable," and this authorization was revoked following period of TDY, member was nevertheless entitled to increased per diem computed on basis that Government messing facilities were not available, since member messed separately in reliance on original determination and since member's post of duty at TDY station was

40 miles distant from main area of station.
B-177586-O.M., May 1, 1973.

Failure to make messing facilities available--
Officers of the uniformed services on temporary duty overseas in connection with operation Longthrust VIII who were issued certificates of nonavailability of a Government mess for per diem subsistence payment purposes but such certificates were subsequently administratively invalidated because of an established policy requiring officers on temporary duty to be subsisted at enlisted field messes may have the nonavailability certificates regarded as a contemporaneous determination of the factual situation then existing regarding the nonavailability of a Government mess (since the enlisted mess was not actually made available to them), and, therefore, per diem payments made to the officers need not be recovered. 44 Comp. Gen. 740 (1965).

Where use of Government facilities may adversely affect mission--Three enlisted military members were on temporary duty as part of team with civilian employees at station where Government quarters and mess were available for enlisted personnel but not for officer-level civilians. Entire team moved to commercial quarters. While civilians are entitled to full per diem, military members are not so entitled since mess and quarters were available unless under the circumstances TDY order-issuing authority certifies that use of Government quarters would have adversely affected mission. B-185376, August 19, 1976.

E. Amount of Per Diem - Shared Lodging

A military member traveling on temporary duty shared a lodging accommodation with another person (his wife) who was not entitled to lodging at Government expense. In the absence of regulations providing otherwise, if he would have used the same accommodation at the single occupancy rate had he not been accompanied, he may be reimbursed on the basis of such single occupancy rate rather than at one-half of the double occupancy rate. If the hotel makes no distinction in rates between single and double occupancy, then the member may be reimbursed on the basis of the full room cost. B-194339, February 7, 1980.

F. Use of Recreation Vehicle for Lodging

Member who uses personal recreation vehicle for lodging while on temporary duty may not be reimbursed portion of the monthly purchase payment on his recreation vehicle for time in temporary duty status. Reimbursement of lodging expenses is to compensate a member for additional expenses he incurs while away from his permanent station. In the case of a member who chooses to reside in a personal recreation vehicle while on temporary duty average lodging costs may include only expenses such as parking space rental, utility connections and shower fees in the computation of his per diem. See 1 JTR, paras. M4205-5 and M4007-4. B-196968, July 1, 1980.

G. Loss of Personal Property on Temporary Duty

A Coast Guard officer on temporary duty placed liquor intended for his personal use aboard a Coast Guard aircraft on which he was to fly from the State of Washington to Alaska. the liquor was lost before the officer reached Alaska. Whether the member may be reimbursed for his loss is for determination by the Coast Guard under the Military Personnel and Civilian Employees' Claims Act of 1964 which provides that claims may be allowed only if possession of the property under the circumstances was reasonable, useful, or proper, and if the loss was not caused by the officer's negligence. Settlement is final and conclusive if statutory conditions are met. B-195295, November 14, 1979.

H. Actual Expenses

Unusual Circumstances

The Per Diem, Travel and Transportation Allowance Committee (for uniformed service personnel) and the General Services Administration (for civilian employees) may issue regulations permitting reimbursement to travelers on an actual expense basis based on unusual circumstances when due to the infrequency of travel to a given location consideration was not given to designating that locality as within a high cost geographical area. Authorization or approval of actual expense reimbursement should be predicated upon advice from the Committee or the Administration, as appropriate,

that the locality was not considered for inclusion in the list due to lack of information with respect thereto and will be applicable only to the specific travel under consideration. B-195366, June 26, 1980, 59 Comp. Gen. ____.

Area not designated high cost

Where travel is to an area that is not designated as a high cost geographical area but where the choice of accommodations are limited or the costs of accommodations are inflated because of conventions, sports events, natural disasters, or other causes which reduce the number of units available, such events may be considered as unusual circumstances of the travel assignment which would permit payment of expenses to an employee or member on an actual expense basis depending upon the circumstances of each case and the necessity and nature of the travel. B-195366, June 26, 1980, 59 Comp. Gen. ____.

Designation of high rate area retroactively

General designation of a high rate geographical area may not be made retroactively even though the existence of normal high costs sufficient to warrant such a designation was unknown to the Per Diem, Travel and Transportation Allowance Committee prior to the performance of travel in any individual case and such facts are thereafter made known. 32 Comp. Gen. 315 (1953). B-195366, June 26, 1980, 59 Comp. Gen. ____.

III. TRANSPORTATION EXPENSES

A. Government Conveyance Directed

Government conveyance available but not used

Under the Joint Travel Regulations which provide that where travel is directed to be performed by Government conveyance and such conveyance is available, but travel is performed by another mode of transportation, payment of the monetary allowance in lieu of transportation is prohibited, a serviceman whose orders required travel by Government air transportation which was available for a portion of the trip, is entitled to reimbursement

for cost of travel by commercial air only for that part of the trip where Government air transportation was not available. 31 Comp. Gen. 572 (1952).

Transportation officer erroneously authorizes commercial transport

An Army officer returning to his new permanent duty station in Hawaii from a temporary duty assignment in the United States who is erroneously furnished transportation by commercial vessel to accompany his dependents authorized this mode of transportation to travel to the new station prior to issuance of the temporary duty orders, is indebted for the cost of the commercial vessel transportation, less the cost of transportation by military air. The member is also properly charged with leave for the difference in time between air and surface transportation. The transportation officer, limited under the member's orders to authorizing transportation by commercial air if military aircraft was not available, exceeded his authority and did not exercise sound traffic judgment in furnishing transportation by commercial vessel, and the member returning to his station under temporary duty orders, his travel is not within the scope of the Joint Travel Regulations provision authorizing commercial vessel travel concurrently with dependents under permanent change of station orders. 49 Comp. Gen. 744 (1970).

B. Government Conveyance Not Directed

Travel by commercial airline

Marine Corps member and his dependent who perform at personal expense circuitous transoceanic travel by commercial airline authorized by permanent change-of-station orders is entitled to reimbursement at Military Airlift Command rates for direct travel between duty stations despite having used commercial airline's reduced military fare contrary to Department of Defense (DOD) instruction providing that such fares may not be used by active duty members whose travel will be paid by DOD. B-198660, August 19, 1980.

C. Use of Government Transportation Requests (TR's)

Commercial transportation authorized - TR available

For travel within the United States, when TR's are available to the traveler at the time and place required and the traveler procures transportation on common carriers at his own expense in amounts of \$100 (plus tax) or less under an individual travel order, he may elect to receive reimbursement for the actual cost of transportation for the mode of transportation authorized and actually used. For amounts over \$100, the member may elect the same procedure, but his reimbursement may not exceed the cost to the Government for authorized transportation had a TR been used. B-163758, July 24, 1972.

When TR not available

Where Army member received TDY orders Friday evening in Tulsa, Oklahoma, directing he report to Durham, North Carolina, following Monday morning, and authorizing travel by public carrier, member was entitled to reimbursement as though TR was not available even though he made no effort to apply for one, since it was unlikely he could have obtained TR under the circumstances. B-170423, February 18, 1972.

D. Use of Privately Owned Vehicles (POV's)

When prohibited

Express prohibition in orders--Member directed to travel from Detroit, Michigan, to Great Lakes, Illinois, for medical observation was not entitled to mileage allowance, where travel by rail was directed and orders stated, "POV will not accompany EM," but member nevertheless performed travel by private auto. B-146525, August 30, 1961. See also B-182918, March 6, 1975.

Group travel - commercial transportation directed--Under orders which directed a unit to move from Fort Campbell, Kentucky, to Fort Indiantown Gap Military Reservation, Pennsylvania, for TDY of approximately 90 days, and which specifically directed travel by commercial air except for certain designated members authorized travel by POV, unit

member not so designated but who chose to travel by POV was not entitled to any mileage allowance. B-173064, June 30, 1971.

When POV authorized

As advantageous to Government--Where points between which travel is performed are adequately served by common carrier and no duty is directed en route requiring the use of a POV, there is no proper basis for a determination that use of POV is more advantageous to the Government. When member is authorized travel by POV, but the use of such transportation is not approved as advantageous to the Government and instead is authorized for member's personal convenience, mileage allowance must be computed at reduced

E. Travel To and From Carrier Terminals

Mileage allowance authorized

A round-trip mileage allowance for members of the uniformed services at 7 cents per mile in lieu of reimbursement for use of taxicabs for each one-way trip between residence or duty station and common carrier terminal by privately owned automobile, not to exceed usual taxicab fare, including allowable tip, for a one-way trip from home to terminal or terminal to home may be authorized under the provisions of section 303(a) of the Career Compensation Act of 1949, which provides 7 cents per mile for travel away from the designated post of duty; therefore, the Joint Travel Regulations may be amended accordingly. 39 Comp. Gen. 131 (1959).

Not local travel - lower mileage allowance rate

Since one way trips by members of the uniformed services between residence or duty station and carrier terminal incident to the beginning or ending of travel away from a permanent duty station are to be distinguished from travel on official business within the limits of a duty station, which is reimbursable under section 2(m) of the act of September 1, 1954, the reimbursement authority for commutation of such one-way trip expenses on a round-trip mileage basis under section 303(a) of the Career Compensation Act of 1949, is subject to the 7 cents a mile maximum fixed by section 303(a)

Gen. 464 (1959).

Flight canceled - mileage and parking fees allowed

An officer of the uniformed services who used his privately owned automobile to reach his airport departure point under orders authorizing travel to attend a conference, but who is prevented from departing due to adverse weather conditions and he returned home after an absence of 4 hours, is entitled to a travel allowance under the Joint Travel Regulations, which authorizes mileage for one round trip from home to airport, plus parking fees, not to exceed the cost of two taxicab fares between those points. 52 Comp. Gen. 452 (1973).

Use of taxicabs and other public carriers

Member on temporary duty assignment was required by circumstances of adverse weather conditions to travel by taxicab from St. John's to Gander, Newfoundland, Canada, to meet connection flight at Gander International Airport. Payment of full taxi fare may be made under the Joint Travel Regulations, which authorize reimbursement for taxicab, bus, streetcar, subway, or other public carrier fares between carrier terminals when necessitated by change in mode of transportation or when free transfer is not provided. B-178022-O.M., August 20, 1973.

Travel to air terminal that is not a local terminal

An officer of a uniformed service used his car to perform two round trips between his residence, Fallbrook, California, near Camp Pendleton and the San Diego, California air terminal, in the course of performing temporary duty travel. His claim for mileage for the two round trips between his residence and the airport may not be paid under item 1 of subparagraph M4401-2 of the Joint Travel Regulations, since the San Diego terminal is not a local terminal with respect to his residence. However, he may be reimbursed for one round trip. B-191624, July 5, 1978.

F. Travel at TDY Station

In general

Transportation expenses incurred by members of the uniformed services in the conduct of official business at temporary duty stations may be reimbursed in the same manner as for reimbursement of such expenses at permanent duty stations to the extent that payment is not currently provided as incident to the temporary duty orders. 35 Comp. Gen. 680 (1956).

Taxicab between quarters and place of duty

The use of taxicabs by members of the uniformed services for travel between their lodging and the place of temporary duty when the lodging is so remote from the temporary duty station that it is not reasonably accessible by public conveyance and when the travel requires an excessive expenditure of personal funds is considered travel on official

business to entitle the members to reimbursement for the actual expenses, provided that the expenses are administratively approved. 42 Comp. Gen. 612 (1963).

POV or public carrier to duty station and restaurants

To provide the same entitlements for local transportation costs to members of the uniformed services as are authorized for civilian employees by the Standardized Government Travel Regulations, member at a temporary duty station for travel between place of lodging and place of business may be reimbursed the cost of bus or streetcar fare, taxicab fare when authorized or approved as advantageous to the Government, mileage for the use of a privately owned automobile, and the expense of travel to the nearest available eating place, considered necessary transportation not incidental to subsistence and, accordingly, the Joint Travel Regulations may be amended to provide the same reimbursement right as authorizing the civilian regulations including expense of daily travel to procure meals, bus or streetcar travel, taxicabs, and mileage, however, 37 U.S.C. 404 governs within and without station travel for the entire trip. 45 Comp. Gen. 30 (1965).

Exact amounts and dates of taxi fares not recorded

Service member while serving on temporary duty was authorized use of taxi service in and around temporary duty station by memorandum endorsement to orders, but cannot furnish evidence of exact dates and amounts for the taxi fares. Since the number of trips claimed was far less than the maximum which could be allowed he may be reimbursed for such fares on the basis of best estimate of taxi trips utilized during the period. B-180243-O.M. May 22, 1974.

Interstation travel

Member of the Marine Corps travelled by privately owned vehicle from his home in Springfield, Virginia, to Quantico, Virginia, in order to perform temporary duty. Member's travel is interstation travel and therefore payment of his travel allowance is governed by 37 U.S.C. 404 (1976), and the implementing regulations. B-196049, April 21, 1980.

Local travel

The Joint Travel Regulations may be amended to expand the definition of the term "area" in paragraph M4500-2 to reflect the view that the area intended to be covered under 37 U.S.C. 408 for reimbursement for travel in the vicinity of a duty station is the normal commuting area of the station concerned. However, in implementing the proposed amendment an arbitrary mileage radius should not be established in setting up the local commuting areas of permanent and temporary duty stations. B-196049, April 21, 1980.

3. Special Conveyances

Hire for extended travel

May be authorized--A Coast Guard member who is required to perform official travel to a place not served by common carriers under circumstances not permitting transportation by Government vehicle, and who is authorized by proper orders to hire a special conveyance (taxicab, U-Drive car, airplane, etc.) to perform such travel, may be reimbursed under provisions of the Joint Travel Regulations. 33 Comp. Gen. 563 (1954).

Taxicabs--Army member whose TDY orders authorized travel by "rail" but who elected to travel to TDY station by taxicab, was not entitled to reimbursement of taxi fare, since hire of special conveyance was not authorized in orders and since travel performed did not come within provision of Joint Travel Regulations which authorizes reimbursement for taxicab fares incident to travel to and



Transoceanic ferries

Although there is no authority in current regulations under which full fare (including that part attributable to transportation of the automobile) for Hovercraft crossing of the English Channel may be paid incident to temporary duty travel of military personnel, it does not appear that payment of such full fare would be objectionable under appropriate regulations if travel by automobile, including transoceanic ferry service is specifically authorized as advantageous to the Government since the transportation of the automobile may be considered as incident to authorized travel of the member in appropriate circumstances. 55 Comp. Gen. 1072 (1976).

Privately owned sailboat

A service member authorized reimbursement of the cost of transoceanic transportation used when performing travel upon PCS who traveled by privately owned sailboat may be reimbursed only necessary expenses directly connected with the operation of the vessel (fuel, oil and docking fees), provided they do not exceed the amount which would have been paid by the sponsoring service for available Government transportation. B-197402, September 16, 1980.

H. Circuitous Routes

In general

Navy member on permanent change of station from Antarctica to Bainbridge, Maryland, instead of normal route (Christchurch to Auckland, New Zealand, by foreign carrier, and by Category "Z" American air to Travis Air Force Base, California), traveled circuitously for personal reasons using foreign air for overseas travel except from Lima, Peru, to Miami, Florida. Since American air was available via the direct route from Auckland to Travis, reimbursement not to exceed Government cost from Christchurch to Travis may be paid for cost of travel from Christchurch to Auckland and from Lima to Miami but not for costs of other foreign travel. 54 Comp. Gen. 850 (1975).

Use of foreign carrier

Former Navy member who upon release from active duty returned to U.S. by circuitous route via foreign carrier is denied claim for additional travel allowances since computation of reimbursement must be based on cost of most direct, usually traveled route. Furthermore, the Joint Travel Regulations prohibit reimbursement of foreign carrier travel unless domestic transportation is impractical, unavailable, or would interfere with official business. Claimant's ignorance of prohibition provides no basis for relief; however, he does appear entitled to additional mileage payment for distance between point of debarkation in U.S. and home of record. B-178847, August 28, 1973.

I. Use of Foreign Air Carrier Prohibited

An Army member who travels with dependents to an overseas location on a foreign airline (one not holding a certificate under 49 U.S.C. 1371) is not entitled to reimbursement for such travel since reimbursement for travel on a foreign airline is prohibited by 49 U.S.C. 1517 and pars. M2150 and M7000-8, 1 Joint Travel Regulations, when United States certificated carriers are available. B-193419, March 29, 1979.

Justification certificate

A service member may execute a justification certificate regarding "unavailability" of United States-flag air carriers, and paragraph M2150-3(1), 1 JTR, defines United States-flag air carrier passenger service "unavailable" if a traveler, en route, has to wait 6 hours or more to transfer to a United States-flag air carrier to proceed to destination. However, it does not apply to a service member waiting to begin travel but not "en route" from origin airport to destination and does not apply if only military reduced rate seats are unavailable when other seats are available. Service member executing such a justification certificate as the basis for United States-flag air carrier "unavailability" when it does not apply may not be reimbursed for travel performed on a foreign-flag air carrier. B-195302, October 17, 1979.

IV. MISCELLANEOUS

REIMBURSABLE EXPENSES

A. Quarters Rented But Not Used

Travel delays

Rent for reserved hotel rooms which could not be used by a group of military and civilian personnel traveling on official business overseas incident to a research project because the Government airplane on which they were traveling was delayed due to mechanical difficulties and weather, and because the notice of cancellation of the reservations arrived too late to permit the hotel to rent all of the reserved rooms, may be considered as a necessary expense incident to the authorized project flight and the claim paid. 41 Comp. Gen. 780 (1962).

Recall to permanent station

Where a Navy officer was unable to fulfill his temporary duty assignment because he was recalled to his permanent station for emergency duties a few hours after arrival at the temporary duty station the advance payment for the rental of a hotel room may be reimbursed in addition to taxi fare and tips for handling baggage at the air terminal since the officer under proper orders rented the hotel room due to the unavailability of Government quarters, and the reimbursable hotel charge is considered an administrative expense that is chargeable to the appropriation for Operation and Maintenance, Navy. 51 Comp. Gen. 12 (1971)1.

TDY at different places - double rental required

An officer involuntarily assigned to bachelor officers quarters at his temporary duty station, Clark Air Base (AB) in the Philippines, which he is directed to maintain while deployed to Taiwan because of adverse weather conditions, and where he is paid for the period August 8 through October 1, 1972, the maximum locality per diem rate

of \$13 is entitled to reimbursement of the \$2 per day service charge he paid during his absence from the AB notwithstanding paragraphs of the Joint Travel Regulations against increasing a maximum locality rate. The service charge is not a rental fee but is intended to defray operating expenses, and as the service was not agreed to by the officer, or required to be furnished during his absence, the reimbursement will not constitute additional per diem. 52 Comp. Gen. 917 (1973).

TDY at different places - double rental for personal convenience .

Navy member sent on 6-month temporary duty assignment to Misawa, Japan, and other places, who maintained unoccupied Government living quarters at Misawa as a matter of personal convenience and for storing personal belongings during short periods when performing additional duty in the Philippines and Korea, and while on leave at Kyoto and Tokyo, Japan, is not entitled to reimbursement for room charges incurred during such periods either as per diem or as a necessary miscellaneous expense incidental to official travel. B-188415, July 6, 1977.

B. Baggage Handling

General rule

The tips given exclusively for handling Government property at hotels may be reimbursed to members of the uniformed services, and the Joint Travel Regulations amended accordingly, the rule that a tip is an incidental expense item included in a member's per diem applying only to personal baggage. However, reimbursement may not be authorized for tips or fees incurred in handling a member's personal baggage as well as Government property at hotels except to the extent a separate charge or additional cost is experienced for handling the Government property. 48 Comp. Gen. 84 (1968).

Failure to itemize reimbursable amounts

Where member claimed reimbursement for expenses incurred for "unloading, movement, checking, loading, and transport of baggage," but statement submitted

did not disclose which items were reimbursable expenses under requirements and limitations of regulations, no amount could be paid on claim. 40 Comp. Gen. 140 (1960).

Excess baggage

Member incurs excess baggage costs while traveling on commercial airline. Under 1 Joint Travel Regulations, para. M4404, such costs may be reimbursed member if authorized before travel or approved after travel by appropriate Army officials. Since excess baggage costs were neither authorized nor approved, member may not be reimbursed. B-195585, February 21, 1980.

C. Airport Taxes

The airport fees military and civilian personnel are required to pay when departing from airports incident to the official travel of themselves and their immediate families and dependents are reimbursable, if the charges are reasonable, as transportation expenses on the basis of a Supreme Court ruling that a user fee imposed on departing passengers does not involve an unconstitutional burden on interstate commerce, and that if the funds received by local authorities do not exceed airport costs, it is immaterial whether they are expressly earmarked for airport use. However, as fees imposed on arriving passengers are held to be an unreasonable interference with interstate commerce, they may not be reimbursed, but if found valid upon appeal, reimbursement is authorized on the same basis as departure fees. 52 Comp. Gen. 73 (1972).

D. Traveler's Checks

Reimbursement to members of the uniformed services for the cost of purchasing traveler's checks, whether the related travel is performed within or without the United States may be authorized without regard to the value of the checks purchased in view of the broad authority for reimbursement in connection with the travel of members and their dependents, and the Joint Travel Regulations amended accordingly, thus bringing reimbursement for the cost of traveler's checks for travel within the United States in line with the long recognition that the cost of traveler's checks incident to travel outside the United States is a valid expense. 51 Comp. Gen. 606 (1972).

E. Passports

No Travel Performed

Air Force member who obtained passport in preparation for overseas TDY assignment, but who was separated from active duty without having undertaken TDY assignment, was not entitled to reimbursement for passport fees, since

there is no authority for reimbursement of such fees incurred in preparation for travel if no travel is performed. B-168038, November 25, 1969, citing 45 Comp. Gen. 34 (1965).

Extra travel to obtain passport

A member may not be reimbursed for travel expenses incurred due to extra travel to obtain passports for a permanent change of station where no travel orders are issued authorizing such extra travel. Also, the charge to leave for the time the member spent obtaining the passports is a matter within the discretion of the service and will not be disturbed. B-195586, July 15, 1980.

F. Ice for Cooling Water

The term "other similar incidental expenses" as used in the Joint Travel Regulations, providing that per diem allowance is designed to cover room rentals, meals, tips, laundry, and "other similar incidental expenses," includes the cost of ice for cooling drinking water so that the cost of ice deemed necessary to cool water in order to make it potable for members of the uniformed services who are receiving per diem while on detached duty is not an expense for which the Government is liable. 31 Comp. Gen. 501 (1952).

G. Dependents' Expenses - Award Ceremonies

There is no authority for the Secretaries concerned to issue regulations authorizing the payment of travel and transportation expenses of dependents of civilian employees or military members to accompany such employees or members who are receiving honor awards, nor is there authority for the payment of travel and transportation expenses of such dependents to receive awards themselves. 55 Comp. Gen. 1332 (1976).

H. Telephone Charges, Athletic Equipment, Banquets, Entertainment, Alcoholic Beverages, Etc.

Members on temporary duty to attend courses offered by certain universities may not be reimbursed for telephone installation and service charges (when for personal convenience), gym outfits (unless gym classes are part

of curriculum), or expenses for alcoholic beverages. There is no basis to authorize TDY allowances for dependents in connection with "Graduation (Wives) Week." Also, "Cape Cod Weekend" expenses, "Can Group" dinner expense, and pro-rata share for entertainment cannot be considered "extraordinary costs of banquets attended in connection with official business as a part of a conference or meeting." Moreover, such expenses may not be considered in determining level of per diem, since purpose of per diem is to offset necessary subsistence costs of travel. B-174464, February 28, 1972.

I. Costs of Babysitting and Gasoline

Member on permanent change of station from California to New Mexico who performs relocation at personal expense is not entitled to reimbursement for babysitting and for gasoline for return trip to California to get dependents, in absence of authority for such reimbursement, such expenses being in nature of miscellaneous costs for which a dislocation allowance was paid to member. B-184023, July 29, 1975.

J. Trip Cancellation Insurance

A member of the uniformed services purchased trip cancellation insurance when he purchased charter flight accommodations. It is the policy of the Government to insure its own risks of loss. Trip cancellation insurance is not a reimbursable travel expense unless it can be shown that the insurance is an inseparable part of a travel package which provides special or reduced fares at a savings to the Government. B-194858, August 7, 1979; 58 Comp. Gen. 710.

K. Use of Travel Agency

A member of the uniformed services, to take advantage of a low cost charter flight, purchased transportation for official travel with personal funds from a travel agency. Since traveler was not aware of the regulation which precludes use of travel agencies he may be reimbursed an amount not exceeding the cost of the transportation if it had been purchased directly from the carrier. B-194858, August 7, 1979; 58 Comp. Gen. 710.

V. SPECIAL CATEGORIES AND CIRCUMSTANCES

A. Reserve, and National Guard, and

Retired Members On Active Duty

Reservists on active duty - length
of active duty period

Per diem allowed if tour of duty less than
20 weeks--Members of Reserve components who are called to active duty or active duty for training, as distinguished from annual active duty for training under orders which required a return home upon completion of duty, are entitled to per diem if called to duty from their homes for tours of less than 20 weeks duration, 37 U.S.C. 404(a)(4) permitting the payment of per diem to reservists ordered from their homes for short periods of less than 20 weeks of duty, irrespective of the type of duty performed, if they are not furnished quarters and mess at a training duty station. 48 Comp. Gen. 517 (1969).

Per diem not allowable if tour of duty more than
20 weeks--When members of Reserve components are ordered to active duty or active duty for training for 20 weeks or more, the rules and regulations relating to temporary duty travel do not apply and the entitlement of reservists to per diem is for determination pursuant to 37 U.S.C. 404(a)(1) and not section 404(a)(4), which provides for the equalization of reservists' benefits with that of Regular members. 48 Comp. Gen. 517 (1969).

Tour of duty extended beyond 20 week period--Where due to unforeseen circumstances, it is impossible for a reservist to complete ordered duty within a scheduled 20-week period, per

Cadets suspended but later reinstated--Cadets are required to sign agreement they will complete full 4-year course at academy, and their posts of duty remain the same during that time. If they decide to travel home during period of leave such travel would be at personal expense. However, cadets suspended for misconduct, and who either go home in leave-without-pay status or are sent to military post to serve in enlisted status, and who then obtain temporary restraining order directing their reinstatement, are entitled to travel allowances for travel performed to home or military post and return to academy. B-177201, December 6, 1972.

Reserve Officer's Training Corps (ROTC)

ROTC members do not have same per diem entitlements as cadets and midshipmen--The Joint Travel Regulations may not be revised to authorize per diem allowances for members of, and applicants for, Senior Reserve Officers' Training Corps to same extent as prescribed for cadets and midshipmen appointed under 10 U.S.C. 2107, in the absence of specific statutory authority for such allowance in 10 U.S.C. 2109 for members not appointed under 10 U.S.C. 2107. 53 Comp. Gen. 957 (1974).

ROTC members not authorized per diem as enlisted Reserve members--Members of, and applicants for, Senior Reserve Officers' Training Corps may not be authorized per diem under the Joint Travel Regulations by virtue of enlisted status in Reserve component, since requirement that such members enlist in Reserve component is for purpose of securing involuntary active military service as enlisted member if student fails to complete course of instruction or refuses to accept appointment as commissioned officer with its obligated service and these members do not attend drills or perform duty other than that prescribed in 10 U.S.C. 2109, which specifically provides travel allowances incident thereto. 53 Comp. Gen. 957 (1974).

ROTC members performing recruiting duties--A cadet in a Reserve Officers' Training Corps (ROTC) at the University of Detroit who under invitational orders performed recruiting duties at two Detroit high schools - a matter of 2 hours and 3 hours duty on separate days - and returned each time to

the University is not entitled to a per diem allowance, having used Government transportation and not having incurred any additional subsistence expenses. ROTC cadets have no military status nor are they Government employees, and unless utilized as consultants or experts, they are considered persons serving without pay and such a person under 5 U.S.C. 5703(c) may be allowed transportation expense and per diem only while en route and at his place of service or employment away from his home or regular place of business. However, since the cadet at the University of Detroit incurred no additional subsistence expenses incident to his recruiting duties he is not considered to have been in a travel status within the meaning of 5 U.S.C. 5703(c). 53 Comp. Gen. 145 (1973).

ROTC members participating in rifle and pistol team matches--Since the participation of members of the Reserve Officers' Training Corps (ROTC) in rifle and pistol team competition matches is neither military training nor part of the ROTC curriculum, but the participation is performed on a voluntary extracurricular activity basis, to provide allowances to members participating in National Matches, they may be considered to have the same status as civilians within the meaning of 10 U.S.C. 4313 so as to entitle them to a travel allowance of \$0.05 a mile and a subsistence allowance of \$1.50 a day, and the authority in 10 U.S.C. 4308(a)(8) may be invoked to provide allowances for participation in regional and international matches if the Secretary of the Army upon recommendation of the National Board for the Promotion of Rifle Practice approves the issuance of regulations to this effect. 50 Comp. Gen. 783 (1971).

ROTC members - actual and necessary expenses authorized--Senior Reserve Officers' Training Corps (SROTC) members appointed under 10 U.S.C. 2104 (1976) incurred expenses for lodging and meals when they were required, through no fault of their own, to delay en route to and from field training or practice cruises at locations where no Government berthing or messing facilities were available. SROTC members appointed under 10 U.S.C. 2104 may not be paid per diem but are entitled to subsistence at Government expense. Because the SROTC members were traveling under proper orders and due to a delay en route were required to secure commercial

lodging and meals (the arrangements for which were made by U.S. Naval Attaches), reimbursement for actual and necessary expenses is authorized. B-195791, March 3, 1980.

C. Applicants for the Uniformed Services

Failure of responsible officials to provide transportation from place of enlistment to first duty station

Enlisted men who are not furnished transportation in kind and meal tickets for travel from place of enlistment to first duty station because recruiting officers failed to provide, or inadvertently denied transportation and subsistence, may be reimbursed for expenses actually incurred, as evidenced by receipts, not to exceed the amount transportation

cases, the approval merely constitutes a determination that the duty was in fact performed under unusual circumstances contemplated by the regulations and would not involve retroactive determination of entitlement. B-161396, May 3, 1976.

Duration of entitlement

Where determination was made in accordance with Joint Travel Regulations that Air Force members would be entitled to special per diem just for period July 13-September 30, 1970, for TDY on Jomalig Island, Philippines, because only resort hotel accommodations were available, and TDY period was prolonged to November 20, 1970, members were entitled to special per diem for additional period, since prolongation of TDY was due to circumstances beyond members' control and they remained subject to extraordinary living costs during additional period. B-172633, July 20, 1971.

Q. Separation and Retirement

Delayed and circuitous travel home upon discharge

An enlisted Navy man who had served in Vietnam and was separated in the Philippines where Government transportation to the United States was available but who upon discharge returned to Saigon at personal expense to be married and then traveled by American commercial airline from Saigon to California is considered to have been authorized rather than directed to travel by Government conveyance to the United States and he may be reimbursed for the commercial air transportation as provided in the Joint Travel Regulations, the reimbursement not to exceed the cost to the Navy to transport him by Government air from Philippines to the continental United States subsequent to discharge. 52 Comp. Gen. 297 (1972).

Travel upon separation paid by civilian employer

Member, who on retirement traveled to his home of selection in Iran, was reimbursed for travel expenses by member's civilian employer. Member is not entitled to reimbursement for travel expenses thereto since such travel was not performed at personal expense as required by applicable regulations. B-185732, March 23, 1976. See also B-182900, February 26, 1976; B-193167, March 2, 1979.

Travel from overseas for retirement processing

Army member who was transferred from Dhahran, Saudi Arabia, to Fort Dix, New Jersey, under permanent change-of-station orders for purposes of retirement separation processing, and who then traveled on to his home of selection for retirement in Athens, Greece, is entitled to travel allowances for all personal travel performed. However, since his travel from the United States to Greece was at personal expense via commercial airline, and it is not indicated that Government transportation was unavailable, his reimbursement for that travel is limited to the cost for military airlift established by regulations. B-192949, June 6, 1979.

Home of selection overseas

A service member was transferred from Greece to McGuire AFB, N.J., for retirement processing, and he selected Taiwan as his home of selection upon retirement. He is entitled to his travel at Government expense from Greece to McGuire and then to Taiwan. However, he is not entitled to his wife's travel from Taiwan to the United States and return to Taiwan because she was residing in Taiwan when his retirement orders were issued. B-195604, September 28 1979.

Commissioned officers, Public Health Service failure to complete term of service

A commissioned officer of the Public Health Service who does not complete a term of active service to which he agreed in writing may be divested of travel and transportation entitlements in accordance with regulations promulgated by the Public Health Service and paragraph M6457 of 1 Joint Travel Regulations, promulgated under 37 U.S.C. 404(b) and 406(c). B-192858, November 14, 1978, B-192285, December 15, 1978.

VI. LOCAL TRAVEL

A. Distinction Between Local Travel and Travel Away from Duty

Member in travel status ineligible
to claim local travel

Local transportation expenses, which are authorized by section 2 (m) of the act of September 1, 1954, for official business within the limits of their duty stations, may also be paid for travel performed in the metropolitan area of the city in which the station is located, or in a comparable area surrounding the post of duty; however, members who are in a travel status within the meaning of section 303 of the Career Compensation Act of 1949 may not be paid for transportation under the 1954 act. 35 Comp. Gen. 677 (1956).

CHAPTER 5

DEPENDENT'S TRAVEL AND TRANSPORTATION ALLOWANCES

I. BASIC ENTITLEMENT RULES

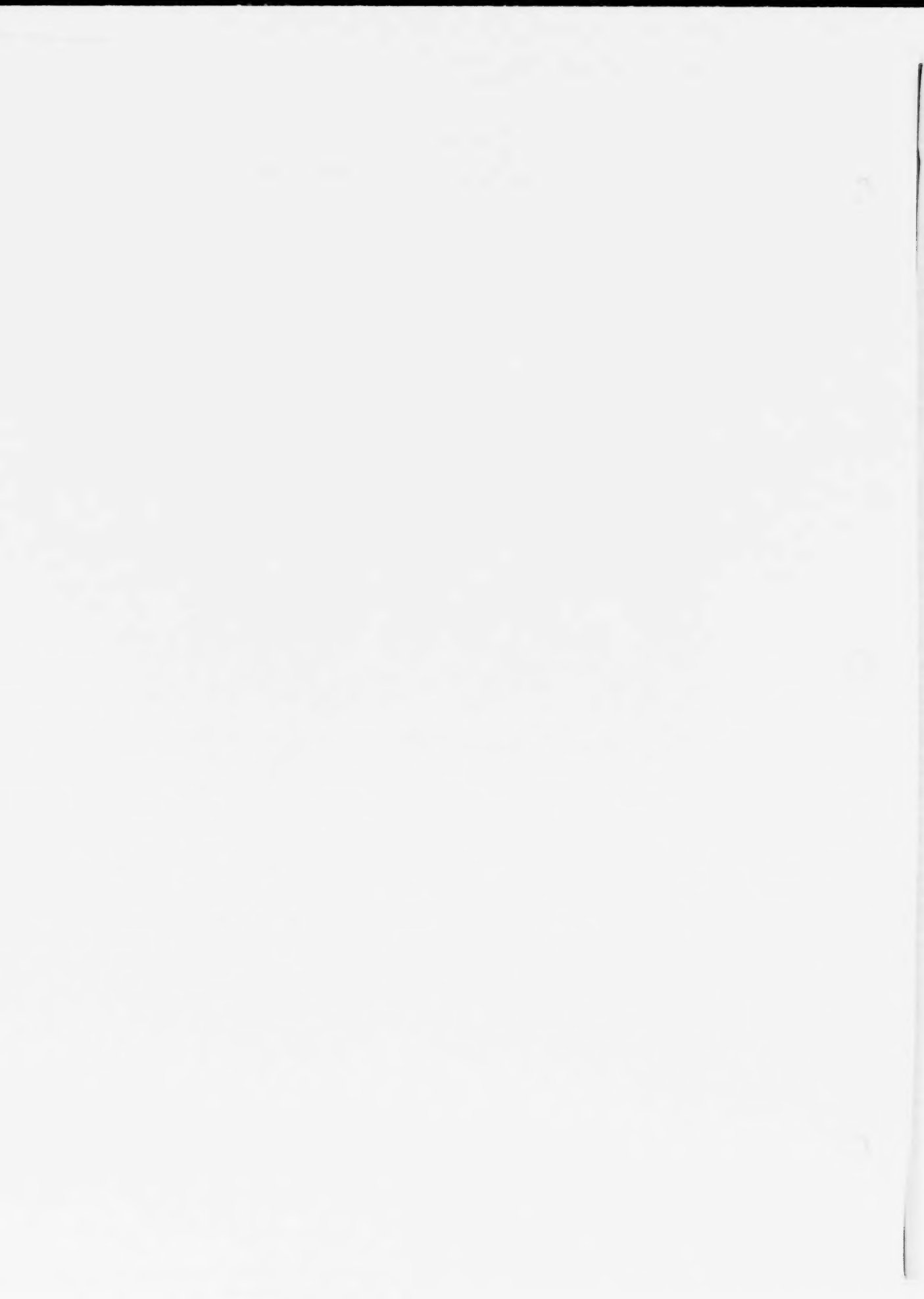
A. Exclusion Of Certain Members

Lower enlisted grades

Eligibility acquired after effective date of orders--
The right to transportation of dependents accrues on the effective date of orders which direct a PCS and there is no authority for the payment of such transportation to the current overseas station when the member attains the necessary grade or completes the required service to be eligible for transportation of dependents after the effective date of the transfer orders. 35 Comp. Gen. 670 (1956). See also 37 Comp. Gen. 715 (1958).

Effect of reenlistment--Members who at the time of discharge and reenlistment at the same station where they had attained the grade for eligibility for transportation of dependents, are in continuous service status and may not be regarded as having met the PCS requirement for reimbursement for transportation of dependents from home to the duty station incident to reenlistment. 38 Comp. Gen. 478 (1959).

Member reduced in grade--Where a member in eligible pay grade E-4 was reduced to pay grade E-1 under a general court-martial and is subsequently released from disciplinary command under orders transferring him to duty pending review of his case by the Court of Military Appeals, he is not entitled to payment for the travel of his dependents incident to the transfer orders. 42 Comp. Gen. 22 (1962). Decision later modified by 42 Comp. Gen. 568 (1963), when additional facts revealed that the member was not subject to the automatic grade reduction and in fact was not actually reduced in grade. However, transportation expenses for dependents were denied since the transfer orders in that case were temporary in nature and as such were not competent PCS orders under which the member is eligible to receive such transportation benefits.



received by a graduate of the United States Military Academy upon receipt of commission as an officer, which orders assign the member to an initial permanent duty station, with temporary duty en route, and which entitled the member to a travel allowance for his own travel on the basis of the distance actually traveled not to exceed that from home or from West Point to the new station by way of any temporary duty station, would entitle the member to reimbursement for dependent travel not to exceed the farther point, home or West Point, to the new station, irrespective of whether the officer's travel is directed from West Point or from home. 38 Comp. Gen. 790 (1959).

Dependent acquired after date travel from academy required--A graduate of the United States Military Academy who, upon receipt of a commission as an officer, is assigned to a new permanent duty station, with temporary duty en route, and who acquires a dependent before the date he is required to commence travel to report to the temporary duty station, is entitled to reimbursement for travel of the dependent to the new station not to exceed travel from farthest point under the officer's orders to the new station; however, if the dependent is acquired after the date of required travel to the temporary station, reimbursement may not exceed entitlement from the temporary to the permanent station irrespective of the place where the dependent is acquired. 38 Comp. Gen. 790 (1959).

Dependent acquired while on temporary duty after commissioning--A graduate of the United States Military Academy who, after receipt of a commission and orders to a new permanent duty station with temporary duty en route, acquires a dependent following arrival at, but on or before the date he is required to depart from the temporary duty point, is entitled to reimbursement for travel performed by the dependent to the permanent duty station, not to exceed entitlement from the temporary to the permanent duty station, irrespective of the place where the dependent is acquired. 38 Comp. Gen. 790 (1959).

Members on active duty for instruction

A member assigned to a school or institution as a student, if the course is to be less than 20 weeks duration, is not entitled to transportation of

dependents. B-150203, November 26, 1962; B-144000, November 10, 1960.

Reservists in basic training

An enlisted member of the reserve component called to active duty for the purpose of engaging in basic training of less than 6 months, and a member called to active duty for less than 20 weeks or active duty for training for less than 20 weeks is not entitled to transportation of dependents. See generally, 43 Comp. Gen. 650 (1964).

B. Issuance Of Orders Requirement

Travel without orders

Where dependents of a member of a uniformed service move from an overseas duty station without orders and without authorization from the Secretary concerned, a claim for reimbursement by the member for the dependents' transportation costs on a subsequent permanent change of station of the member must be denied. B-195941, October 18, 1979.

Travel prior to orders

Before PCS orders issued--Members of the uniformed services whose dependents travel prior to issuance of permanent change-of-station orders may not be reimbursed for travel expenses under 37 U.S.C. 406 (1976). Under paragraph M7003-4 of the Joint Travel Regulations, an exception to the general rule may be authorized provided the voucher presented for payment is supported by a statement from the commanding officer (or his designated representative) of the headquarters issuing the orders that the member was advised prior to the issuance of the orders and performance of travel that such orders would be issued. However, mere notification and administrative recognition of date of eligibility for retirement may not be considered as advice that orders are to be issued. See 52 Comp. Gen. 769 (1973). B-193521, January 26, 1979. See also, B-192007, July 24, 1978; B-193339, June 28, 1979; and B-192165, July 24, 1978.

After notification before orders issued--Where in contemplation of the deactivation of a military base, a member is selected for an overseas assignment at which he elected to serve an unaccompanied tour but

before the orders were issued he was given a humanitarian assignment within the U.S. under orders issued about the same time the overseas transfer would have been made, the member is entitled to reimbursement for the advance travel of his dependents incident to his PCS transfer within the U.S. on the basis of an administrative determination that the transfer was for the needs of the service, and the acceptance of the commanding officer's certification that the member was advised prior to the issuance of the overseas assignment that they would issue as applying to the advance travel of the dependents to the new duty station. 42 Comp. Gen. 504 (1963).

Costs incurred in contemplation of orders never issued--A member's claim for reimbursement for costs incurred preparatory to a permanent change of station (PCS) where the member had been notified of the PCS but orders were never issued, including loss on sale of a mobile home and furnishings and the replacement cost of furnishings and appliances may not be allowed because there is no authority to pay such costs. B-192165, July 24, 1978.

Starts before completed after orders issued--An announcement that a member had been selected to receive a commission and that he would attend an indoctrination course, together with a letter from the member's commanding officer to support the fact that the dependents commenced travel prior to effective date of the member's orders and arrived at the new station subsequent to the member, does not indicate that the member had knowledge of

the PCS at the time dependents began their travel. Therefore payment of dependent's travel is authorized only from the place where the dependents were located on the effective date of the PCS orders, not to exceed the distance from the place where the dependents had been located prior to travel to the new station. 40 Comp. Gen. 251 (1960).

Prior to release orders--Reimbursement for travel of a dependent wife from the last duty station to home two months before issuance of orders which released the member from active duty is not authorized under the JTR's which contemplate departure of dependents during short period of time between determination to order change of station and date of issuance of orders. 34 Comp. Gen. 241 (1954).

Prior to release due to nonselection for promotion--Where an officer of the Air Force was not selected for promotion to the next highest grade and in anticipation that he would be nonselected a second time thus being involuntarily released from active duty moved his household effects and dependents to his home of selection before orders for his release from active duty were issued, no reimbursement may be made for the transportation expenses incurred by the officer. B-193767, January 20, 1979.

Prior to placement on TDRL--A member who, while on leave prior to permanent retirement, traveled to his home is not entitled to a mileage allowance by reason of erroneous advice that his name had been placed on the temporary disability retired list nor to mileage and reimbursement for dependent's travel prior to issuance of competent orders. 36 Comp. Gen. 633 (1957).

Intent to change home port-ship overhaul scheduled--Circumstances where members' permanent change-of-station orders are not timely issued when a ship is scheduled for overhaul because of delay in determining the overhaul port due to Government contract bidding requirements may be considered unusual circumstances incident to military operations. Therefore, regulations may be amended to authorize transportation of household effects in such cases upon a statement of intent to change a ship's home port, but prior to issuance of orders. B-195140, June 4, 1980.

Temporary duty orders (see also III. B.)

General rule--The transportation of dependents of members to the temporary duty stations overseas to which the members have been assigned incident to an ordered PCS overseas is not provided for by 37 U.S.C. 406, and, therefore, there is no authority for the promulgation of regulations to permit the travel of dependents to a member's permanent duty station via his temporary duty points, subparagraph (a) limiting the transportation of dependents incident to an ordered PCS to the distance from the old to the new permanent station, and the exceptions to the general rule in subparagraph (e) applying only to situations where orders have been issued, or have been issued under circumstances precluding their use as authority for the transportation of the member's dependents. 42 Comp. Gen. 287 (1962).

Temporary duty changed to permanent--The effective date of orders for entitlement to transportation of dependents of members of a naval air squadron who were issued orders to proceed to a temporary duty station overseas on or before May 1, 1958, and by dispatch of April 29, 1958, received April 30, 1958, the temporary duty station was designated as a permanent station effective August 1, 1958, is April 30, 1958, since when the members reached the overseas station they were at their permanent station for entitlement to transportation of dependents and even though the orders might be canceled before August 1, 1958, a member whose dependents traveled after April 30, 1958, would be entitled to return transportation of dependents. 38 Comp. Gen. 697 (1959).

Modification, cancellation, revocation of Orders

Temporary station made permanent--The effective date of orders for entitlement to transportation of dependents of members of a naval air squadron who were issued orders to proceed to a temporary duty station overseas on or before May 1, 1958, and by dispatch of April 29, 1958, received April 30, 1958, the temporary duty station was designated as a permanent station effective August 1, 1958, is April 30, 1958, since when the members reached the overseas station they were at their permanent station for entitlement to transportation of dependents and even though the orders might be cancelled before August 1, 1958, a member whose dependents traveled

after April 30, 1958, would be entitled to return transportation of dependents. 38 Comp. Gen. 697 (1959).

Change of permanent station--A member whose orders transferring him from overseas to a duty station within the United States were changed prior to the effective date by orders directing him to report to another station is entitled to an allowance for the transportation of his dependents for a distance no greater than from the designated location to which they had been furnished transportation at Government expense from the member's overseas station prior to his relief from that station to the location

of the ultimate permanent duty station in the United States to which the travel was actually performed. 33 Comp. Gen. 43 (1953).

Preparatory expenses, order canceled--Passport application expenses incurred by an Army, incident to PCS orders to an overseas assignment which are revoked prior to the commencement of travel by the member and his dependents are preparatory expenses that are not reimbursable under 37 U.S.C. 406a,

providing for reimbursement of expenses for travel commenced prior to the effective date of PCS orders that are modified, canceled or revoked, and the transfer orders of the member having been revoked before the member and his dependents departed the old station, absent specific statutory authority in the statute for the reimbursement of preparatory expenses, the claim for passport costs may not be allowed. 45 Comp. Gen. 34 (1965).

Amendment on revocation of retirement orders--A member whose dependents traveled to a selected retirement home prior to the issuance of retirement orders that were canceled at his request prior to effective date and then traveled to the member's new permanent duty station located in the corporate limits of his old station is entitled to a monetary allowance for both moves. When orders that direct a PCS, including orders directing release from active duty or retirement are canceled or modified before their effective date for the convenience of the Government and/or in circumstances over which a member has no control, the benefits prescribed by 37 U.S.C. 406a accrue, and the fact the member withdrew his retirement request is immaterial since the Government was under no obligation to accept the request and apparently did so primarily for the convenience of the Government. 53 Comp. Gen. 55 (1973).

Ship overhaul cancelled--Where member's permanent change-of-station orders are not timely issued when a ship is scheduled for overhaul and the regulations are amended to permit shipment of household effects before orders are issued, regulations may be further amended to authorize the return shipment of household effects if the ship overhaul is cancelled. B-195140, June 4, 1980.

C. Travel Performance Requirement

Pursuant to member's ordered travel

Members of the uniformed service have been authorized travel and transportation for their dependents at Government expense from a very early date and upon the basis that such an allowance was payable only when some travel was performed. The statute providing such authorization, presently codified as 37 U.S.C. 406, was enacted in recognition of the hardships members would encounter if some provision was not made for keeping them and their families

together. It was never intended to be a gift for travel not performed or for travel which could not be considered as incident to a change of residence resulting from an ordered change of station (PCS), see 33 Comp. Gen. 431 (1954), or in some other way in the interest of or for the convenience of the Government. This right is based on and is no greater than the rights secured to the member under orders incident to his own travel, unless applicable provisions of law provide otherwise. See 46 Comp. Gen. 852, 845 (1967). Although travel and transportation of dependents is authorized under various types of orders, the most common and most frequent is the PCS move.

Within corporate limits of duty station

PCS within corporate limits--A member is not entitled to transportation of dependents at Government expense where the dependents remain at his place of residence on his transfer overseas and then move to a new address in the same city on his reassignment to the former station. 35 Comp. Gen. 167 (1955).

Change in duty assignment - same station--A change in duty assignment from one point to another within the corporate limits of the same city is not a permanent change of station within the meaning of the applicable statute and regulations such as would authorize transportation of dependents. 36 Comp. Gen. 113, 115 (1956).

Change in duty assignment - unusual circumstances--Under the statutory authority of 37 U.S.C. 406(e) (1976), Volume 1 of the Joint Travel Regulations may be amended to allow a service member any necessary drayage and storage of household goods when he experiences an involuntary extension of assignment at a permanent duty station upon completing a training program there, and he is required for reasons beyond his control, such as the refusal of his landlord to renew a lease agreement, to change his residence on the local economy incident to that extension of his assignment. B-195731, July 28, 1980.

Change in residence for personal convenience--Neither 37 U.S.C. 406(e) nor any other provision of statutory law contains authority which would permit the amendment of Volume 1, Joint Travel Regulations, to allow the drayage of a service member's household

goods to a new residence when his duty assignment at a given location is extended, and he then elects solely as a matter of personal preference to move to new living quarters. B-195731, July 28, 1980.

Delay in performance

After second PCS--Since the dependents of a member did not exercise the right to Government transportation when the member was transferred from his old permanent duty station in Hawaii to a new permanent duty station in Texas, upon the member's permissive transfer to a subsequent permanent station in California, the dependents may be afforded transportation from Hawaii to California for a distance that does not exceed the distance between Hawaii and Texas. The permissive orders which provided that the transfer was to be at member's expense and that they were to be revoked if he did not desire to do so, did not contemplate travel on public business, did not provide entitlement to the travel of his dependents, and therefore, the entitlement to travel to the permanent duty station (Texas) had not been terminated. 53 Comp. Gen. 667 (1974).

More than two years after orders--A member who more than 2 years after issuance of PCS orders transferring him from a hospital assignment to the area where he had served as a ROTC staff member and where his dependents continued to reside, moved his dependents to on-base housing as his presence was required

obligating the member to serve for an additional period of time so as to meet the requirements of travel authorization. B-169483, April 22, 1970; B-157874, December 10, 1965 and B-186440, July 6, 1976.

Less than 12 months of tour remaining--Travel to a duty station outside the United States unless the member has a minimum of 12 months remaining in his overseas tour after scheduled arrival of dependents is not authorized. Thus, where a member who shortly before issuance of PCS orders to a restricted area upon completion of an unaccompanied tour of duty at an overseas station is married and pays the cost of his wife's travel to the United States has not met the requirements that he have at least 12 months remaining on his overseas tour after acquisition of a dependent for entitlement to reimbursement for dependent's travel. 47 Comp. Gen. 445(1968).

Dependent acquired overseas--A member married in Honolulu, his home, where his wife continued to reside when he was assigned to Vietnam in an ineligible grade for dependent travel, who prior to the effective date of the PCS to Texas was promoted to an eligible grade for dependent transportation, nevertheless is not entitled to reimbursement for his wife's transoceanic travel, even though his status is similar to that of a member who acquired a dependent overseas since he did not have at least 12 months remaining on his overseas tour, nor has his dependent been authorized to be present in the vicinity of his overseas station and he, therefore, is regarded as a member "without dependents" and subject to the restrictions of the JTR. 51 Comp. Gen. 362 (1971).

Approval of presence by commander

Travel to U.S.--Travel to the United States at Government expense when the presence of the dependents at the overseas station was not authorized or approved by the appropriate overseas commander is not authorized. 51 Comp. Gen. 362, supra; and 51 Comp. Gen. 485 (1972).

Travel within U.S.--Entitlement to expenses of travel of member's wife from overseas station where member's orders made no provision for her travel, depends on whether her presence overseas was command sponsored. If so, reimbursement may be made for the cost of

Government air travel from overseas station to home of record incident to member's separation. If not command sponsored, there is no entitlement to overseas transportation and transportation within continental U.S. is limited to a monetary allowance for the distance between the aerial port of debarkation and the home of record. 53 Comp. Gen. 105 (1973).

Designated location travel

From U.S. designated location to overseas--

Transportation of a dependent of a member to the member's overseas station from a place to which the dependent had gone at Government expense under earlier change of station orders within the United States and where the dependent remained after the member was transferred overseas without concurrent travel of dependent being authorized may be regarded as travel from a designated location to the overseas station for reimbursement of the full cost of transportation and the limitation in the JTRs which precludes payment of transportation in excess of the cost from the old to the new station when travel is performed from a place other than the member's old station, is not applicable to transfers to overseas areas. 38 Comp. Gen. 453 (1958).

To location in U.S. certified as bona fide residence--

Marine officer transferred from unrestricted duty station in North Carolina to restricted duty station at Okinawa, Japan, certified that dependents' travel to New Hampshire was travel to a designated place for purposes of establishing a bona fide residence. Subsequently, he alleges certification was done because of erroneous advice and that dependents intended to establish residence in Okinawa. Member claims dependents' travel from North Carolina to Los Angeles, California, the port of embarkation for Okinawa. Since member's entitlement vested upon his certification of New Hampshire and dependents' actual travel there, member may only receive dependents' travel allowances to New Hampshire. B-195420, January 9, 1980.

Dependents visiting member when PCS orders issued--

Uniformed service members' dependents were moved at Government expense to designated places in the United States when the members were transferred to an overseas station to which dependents may not be moved at Government expense. Subsequently, the dependents

joined the members at personal expense in the area of the overseas restricted duty station. The dependents were in the area with the members when they were notified of a permanent change of station to an overseas unrestricted duty station, but the dependents returned to the designated place in the U.S. prior to travel to the new duty station. The members may be reimbursed dependents' transportation expenses from the designated place to the new permanent duty station since the dependents had established a residence at the designated location to which they returned.
B-195643, April 24, 1980.

Sea Duty - Special Rules

Dependent travel authorized when sea duty is determined "arduous"

When a member of the uniformed services is assigned on a permanent change of station to sea duty and the duty is determined by the Secretary concerned as being unusually arduous (absent from the home port for long periods totaling more than 50 percent of the time), regulations may be amended to authorize transportation at Government expense of dependents, baggage and household effects to and from a designated place even though the location of the home port or shore station are the same, since such duty is considered sea duty under unusual circumstances as provided for in 37 U.S.C. 406(e) (1970). 43 Comp. Gen. 639 (1964) modified. 57 Comp. Gen. 266 (1978).

Change in home port designation

Qualifications as dependents--Members who are assigned to ship based fleet activity mobile units when they receive notice that the home port of the vessel is changed but who do not move their dependents to the new station until sometime after the effective date in the notice because their unit is deployed overseas at the time, nevertheless, must have the statutory designation of the home port of the vessel as the member's permanent station applied so that the effective date in the orders directing the change of the home base of the vessel is the date for determining the members' dependents who are entitled to transportation at Government expense rather than the constructive date on which the unit actually moved to the new base. 42 Comp. Gen. 167 (1962).

Dependent travel authorized--A member of the naval
forces assigned to a vessel the home port of which

5-12b (Change 2)

Transportation as related to dislocation allowance--
The payment of dislocation allowance to a member without dependents who is receiving BAQ as a member with dependents for her mother who will not join her at her new duty station where she was not assigned Government quarters depends on whether or not the mother resided with the member at the old station. If she did not, the member is entitled to a dislocation allowance in an amount equal to the applicable monthly rate, but if the mother did reside with the member at the time of transfer, her entitlement to transportation for the mother precludes payment of the allowance even though the mother may not have changed her residence. 52 Comp. Gen. 405 (1973).

Children - Status

Illegitimate child--Member may claim a stepchild as a dependent regardless of the fact that the child is the illegitimate child of his spouse and he is not the blood father, by virtue of fact that he has accepted full responsibility for that child by his marriage to the child's mother. B-177061, B-177129, December 13, 1974.

Stepchildren not supported by member--A member who regularly makes substantial contributions to the support, maintenance, and education of his minor stepchild, a member of the household without independent means, may be considered to have stepchild in fact dependent upon him so as to be entitled to reimbursement for the cost of the stepchild's transportation, even though the member's wife receives contributing support from child's natural father. 34 Comp. Gen. 193 (1954) and 34 Comp. Gen. 694 (1955).

Stepchildren - outside contributions to support--
Minor stepson of a member, whose wife is receiving Social Security and VA payments as the result of the death of the child's natural father while in armed forces, in an amount sufficient to cover the child's actual monthly living expenses, is not in fact dependent upon the member so as to entitle the member to reimbursement for the cost of the child's transportation incident to change of station. 34 Comp. Gen. 625 (1955). See also B-177061, November 4, 1974, and B-196727, May 20, 1980.

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June 3, 1957; B-186308, July 22, 1976; and B-178229, September 14, 1973; and B-197144, July 22, 1980.

Member granted retroactive temporary custody--Divorced member whose former wife was given legal custody, care, and control of their children under court order and who subsequently takes actual custody of children and then obtains court order granting him retroactive and prospective temporary legal custody, care and control is entitled to reimbursement for dependent travel since his permanent duty station was changed while he had temporary legal custody. B-197384, August 12, 1980.

Children-Age limitations

Majority attained while stationed overseas--An unmarried child of a member transported outside the United States or to Hawaii, or Alaska at Government expense, who attains 21 years of age while the member is serving in such place is not limited to returning the dependent to the U.S. upon assignment of the member to duty in the U.S. The JTR's may be amended to expand dependent travel entitlement to include travel between unrestricted overseas areas incident to PCS orders, or to return such dependents to the United States at Government expense when the member is assigned from an unrestricted to a restricted overseas station. 45 Comp. Gen. 82 (1965).

21st birthday during travel--When a dependent of a member who became 21 years of age after the date a delayed travel authorization for transportation of the dependent to the member's overseas station was issued, but before the time the dependent arrived at the port of aerial embarkation for overseas travel, the member may not be reimbursed for the transportation of the dependent to the overseas station. Entitlement is determined on the basis of the attained age of the dependent on the date of embarkation. 44 Comp. Gen. 98 (1964).

Children remaining overseas after reassignment--The fact that an unmarried dependent transferred overseas at Government expense incident to the assignment of a member remained overseas after reaching 21, and the member's assignment to the United States, only returning to U.S. after the member's reassignment to another permanent duty station within the U.S. does not defeat entitlement to dependent's transportation.

Therefore, the member is entitled to the transportation of the dependent from the place at which located overseas to the duty station, at which the member is located at the time the travel is performed, not to exceed the distance from the old station overseas to the current duty station in the U.S. or from the last station in the U.S. to the current station, whichever is greater. 47 Comp. Gen. 691 (1968).

B. Household Goods, Personal Effects

Goods included

General limitation--The term "baggage and household effect" used in 37 U.S.C. 406 to authorize transportation incident to a temporary or permanent change of station for a member and in the implementing JTRs, a term that does not lend itself to precise definition and which has been interpreted to mean in its ordinary and common usage as referring to particular kinds of personal property associated with the home and person, may not be redefined to include all personal property associated with the home and person which will be accepted by a carrier. 52 Comp. Gen. 479 (1973).

Exclusions - boats etc.--The definition of the term "household goods" contained in the JTR's promulgated under the authority of 37 U.S.C. 406(b), may not be revised to enlarge the term to include boat components such as outboard motors, seat cushions, life jackets, and other boat gear, as acceptable items for shipment as household goods. Notwithstanding the lack of preciseness of the term "household goods", the term in its ordinary and usual usage is generally understood as referring to furniture and furnishings or equipment--articles of a permanent nature--used in and about a place of residence for the comfort and accommodation of the members of a family, and the term is not viewed as encompassing such items as boats, airplanes, and house trailers. 53 Comp. Gen. 159 (1973).

After acquired goods - replacement items--The prohibition in the JTR's that household goods acquired by a member after the effective date of PCS orders may not be transported at Government expense, except household goods purchased in the United States when shipped to an overseas station, may be waived for equipment serviceable on the effective date of orders and replaced because of breaking down, wearing out,

or otherwise becoming useless after such date and before the date the goods are turned over to the transportation officer or carrier for shipment, and the JTRs may be amended to authorize shipment, within authorized weight allowances, of bona fide replacements of articles in the possession of a member on the effective date of his orders, but the exception may not be extended to retirement or separation from

the service cases, the authority in 37 U.S.C. 406(b) and (e), based on the concept of a change of station allowance, not covering items acquired up to a year later that do not relate to the member's service. 43 Comp. Gen. 514 (1964).

Weight limitations

Weight determination primarily administrative matter--The question whether and to what extent authorized weights have been exceeded in the shipment of household effects by members of the uniformed services is considered to be a matter primarily for administrative determination and ordinarily will not be questioned in the absence of evidence showing it to be clearly in error. B-196994, May 9, 1980, See also B-198264, May 6, 1980, and B-197984, April 3, 1980.

Additional weight for professional goods--A military member who is authorized to ship professional books, papers, and equipment along with household goods may receive credit for the weight of such items. The administrative determination of the weight of professional materials, based on the shipper's inventory, will be accepted where the member, who claims allowance for additional weight, has presented no clear evidence showing it to be incorrect. B-195606, March 5, 1980. See also B-196994, May 9, 1980.

Increase after retirement--The right of a member to transportation of household effects accrues on date of retirement. The allowance to be shipped at public expense is that authorized at the time the right accrues, and delay in shipment does not entitle the member to an increase in weight promulgated by amendment of regulations subsequent to the date of the member's retirement. 10 Comp. Gen. 312 (1931).

Effect of promotion--The right to transportation of household effects accrues on the effective date of the orders to make a PCS. The allowance to be shipped at public expense is that established for the rank held on such date, and a promotion in rank while household goods are en route between the old and new permanent stations does not increase the weight to be shipped at public expense. 8 Comp. Gen. 528 (1929).

Shipment before promotion--The transportation of a member's household effects on PCS being a service in kind, promotion after transportation accomplished does not authorize an increase in the weight allowance to be shipped at public expense, notwithstanding the promotion is effective prior to the date on which the change of station order is required to be obeyed and the member could have delayed the shipment until a date subsequent to the effective date, and date of acceptance, of the promotion. 16 Comp. Gen. 68 (1936).

Liability for excess weight--A member whose change of station orders are rescinded subsequent to the shipment of his household goods in excess of his weight allowance, and his reassignment necessitated the reshipment of the goods notwithstanding the Government's action was beyond his control is nevertheless liable for the additional cost incurred for the shipment of the excess weight over the circuitous route. The authority in 37 U.S.C. 406a to reimburse a member for the expenses incurred prior to the effective date of PCS orders that are later canceled, revoked, or modified is limited to the travel and transportation expenses prescribed in 37 U.S.C. 404, 406, and 409, and, therefore, the member may not be relieved of the liability imposed in the JTR's to pay the cost of shipping the excess weight over the circuitous route. 49 Comp. Gen. 255 (1969).

Weight of subsequent move not acceptable--Evidence of the weight of household effects shipped in a subsequent permanent change-of-station (PCS) move is not sufficient to show that the properly determined weight of household effects shipped in a previous PCS move was incorrect. B-198264, May 6, 1980. See also B-194315, October 24, 1979.

Goods not reweighed--An Air Force member's claim for refund of shipping charges collected from him for the excess weight of his household goods on the basis that the administrative regulations directing that his household goods be reweigh were not followed may not be allowed in the absence of some other evidence that the weight was in error since such regulations are procedural in nature and do not apply to administration or interpretation of entitlements. Since the weight of the household goods was established at origin by the certificate of a public weighmaster and since no error in such weight is alleged or shown, that weight must be used in determining the member's liability. B-190687, March 22, 1978. See also,

B-194733, March 10, 1980, B-189888, March 22, 1978, B-194961, July 23, 1979, and B-192618, November 9, 1978.

No advance notice of excess weight--A service member is charged the cost of shipping household goods in excess of his weight allowance, but asserts that because the transportation officer failed to notify him of the excess weight in accordance with Army regulations, he should not be charged for the costs. The regulations authorized by 37 U.S.C. 405 providing entitlement to transportation of household goods are contained in Volume 1, Joint Travel Regulations (1 JTR), not the Army regulations. Para. M8007-2, 1 JTR, provides that cost of shipping household goods in excess of authorized weight will be borne by the member. Failure of a transportation officer to notify member of excess weight is not a criteria for exempting a member from paying these costs. B-199109, August 15, 1980. See also B-195606, March 5, 1980.

Audit on excess weight--A proposed procedure to establish a minimum weight of 300 pounds for the examination of shipping documents of household goods shipped to determine if there are excess costs on account of members exceeding their authorized weight allowances would not satisfy the audit requirements of the U.S. General Accounting Office and may not be approved as there is no legal basis for disregarding shipments weighing less than 300 lb. in determining whether excess costs are involved when to do so could serve to permit shipment at Government expense of weights in excess of those prescribed by the JTR's implementing 37 U.S.C. 406 authorizing shipment. Moreover, departments have the responsibility to maintain adequate controls in order to determine when shipments involving excess costs have been made and to take appropriate action to recover the amount of any access costs. 50 Comp. Gen. 705 (1971).

Orders requirements

Shipment prior to orders - military necessity--Although household effects of members may be moved at Government expense within prescribed weight allowances under the authority of 37 U.S.C. 406(b) incident to a PCS, the JTR's preclude shipment at Government expense when shipment occurs prior to the issuance of orders, except upon certification by

proper authority that shipment was due to an emergency, exigency of the service, or required by service necessity. The authority for the transportation of dependents, baggage and household effects between points in the U.S. in unusual or emergency circumstances when incident to military operations or need may not be extended to authorize transportation long prior to issuance of PCS orders solely on the basis of dependent's need. 52 Comp. Gen. 769 (1973).

Shipment prior to orders - evidence of shipment--

A former Navy member who claims reimbursement for shipping his household effects and supports his claim with receipts indicating that the shipment was made 11 months prior to the issuance of permanent change-of-station orders may not be reimbursed since generally shipment of household effects prior to orders is not authorized. His statement that the shipment was made after his orders were issued, not on the date of the receipts, is insufficiently supported to overcome the strong presumption that the shipment was made about the time of the receipt of dates. B-194556, June 13, 1979.

Changed orders--When a member of the uniformed services incident to his transfer overseas is authorized the movement of dependents and household effects, but after shipment of the effects, his dependents are unable to join him because of illness or other personal

reasons, and his tour is changed to an unaccompanied tour, the return of the member's household effects at Government expense from the overseas duty station to a designated place in the U.S., Puerto Rico, or a territory or possession of the U.S., may not be authorized. The transportation of household effects of a member at Government expense may be authorized pursuant to 37 U.S.C. 406(b) only in connection with a duty station change, except in unusual or emergency circumstances (37 U.S.C. 406(e)), or if it is in the best interest of the member, his dependents, or the United States (37 U.S.C. 406(h)). 49 Comp. Gen. 695 (1970). Overruled in part by 55 Comp. Gen. 1183 (1976).

No change of station involved

Private quarters declared unfit--Both military members and civilian employees at overseas permanent duty stations who are required to vacate local housing leased because no Government quarters were available may be paid drayage costs to move their household goods to other housing on the local economy when the quarters they occupy are declared by medical personnel to no longer meet established health and sanitation standards on the basis military members must obey orders and civilian employees move for the convenience of the Government. However, neither are entitled to drayage when the move to other non-Government quarters results from a landlord refusing to renew a lease or otherwise permit continued occupancy as such a change of quarters is not for the convenience of the Government. 52 Comp. Gen. 293 (1972).

Ship to ship PCS at same home port--A naval officer who, incident to a transfer from sea duty aboard one ship to staff-based duty aboard another ship at the same home port, performs duties in the nature of shore duties and occupies Government quarters ashore must, nevertheless, have the assignment viewed as a ship-to-ship assignment at the same home port and not a PCS for entitlement to transportation of household effects and, therefore, shipment of the member's household effects from nontemporary storage to assigned quarters at Government expense may not be authorized. 46 Comp. Gen. 263 (1966).

Move into Government controlled housing--The drayage of household effects of members stationed overseas

from local economy housing to former rental guarantee housing, which is also privately owned, may not be considered as incident to a directed move to Government quarters nor a movement involving unusual or emergency circumstances to be authorized at Government expense under 37 U.S.C. 406, and, therefore, an amendment to the JTRs to permit drayage at Government expense in such cases may not be authorized. 45 Comp. Gen. 569 (1966).

Shipment of personal effects - unusual circumstances--The cost of shipping the personal effects of Navy member to and from a vessel that is away from its home port and home yard, effects that normally would accompany a member to his PCS but for the circumstances of the travel, may be paid without regard to the PCS allowance for household goods, or to the fact that the cost of the shipment will exceed the cost of shipment from the old home yard or port to the new home yard or port, and the JTR's may be amended to provide, within authorized weight allowances, for the transportation of the personal effects incident to the transfer of a member to and from a permanent duty station aboard ship, the broad authority in 37 U.S.C. 406 for transportation of baggage and household effects on a PCS covering both the movement of effects for use ashore by dependents and those personally required by the member. 45 Comp. Gen. 480 (1966).

Reimbursement for self moves

Advance of funds--The JTR's may not be amended to allow advance payment for rental vehicles for transportation of personal property, and related expenses as the advance payment provisions in 37 U.S.C. 404(b) limit such payments to member's personal travel, and in absence of specific authority for advance payment for transportation of personal property, 31 U.S.C. 529 precludes the issuance of regulations which would authorize such advance payments. 54 Comp. Gen. 764 (1975).

Personal labor nonreimbursable--Due to the birth of his third child, a member's request for assignment from 2-bedroom to 3-bedroom Government quarters was granted. Member was informed that he did not qualify for Government move, and he moved himself. Later the member is informed that he was entitled to move at Government expense and he filed a claim.

Member's entitlement is governed by 1 JTR, para. M8500 which allows member to be reimbursed actual expenses incurred. Since member indicates that his only expense was non-monetary (i.e., personal labor expended), the claim is denied. B-195148, March 7, 1980. See also B-190072, August 19, 1980.

"Do-it-yourself" moves

Weight certificates required--The military services' requirements that in order to qualify for an incentive payment under the "do-it-yourself" household goods moving program, a member must have certified scale weight certificates showing both the empty and loaded weight of the vehicle used, is in accordance with the authorizing law and Joint Travel Regulations. Although GAO authorized payment in an unusual case based on constructive weight, in the future the services' weight certificates requirement will be followed. B-191016, October 23, 1978, overruled. B-191016, April 20, 1979.

Failure to follow procedures--Air Force member who moved household effects under the do-it-yourself program did not follow the procedures set out in the regulations of the Air Force; particularly, he did not obtain acceptable evidence of the weight of the goods transported. In view thereof and in view of numerous irregularities in connection with the move and the submission of the claim, payment of the incentive allowance may not be allowed. B-198476, July 28, 1980.

Used of a borrowed vehicle -Although the language of the Joint Travel Regulations appears to preclude participation in the "do-it-yourself" program by members transferring household goods via borrowed privately owned vehicle, such a conclusion would be inconsistent with the purposes of the program. Thus, we agree with PDTATAC that the term "privately owned," as found in 1 JTR paragraph M8400, was used merely as a means of distinguishing the vehicle in question from rental and commercial vehicles, and does not require ownership of the vehicle by the relocation member. B-193943, October 15, 1979 (59 Comp. Gen. 34).

Nontemporary storage

Assigned to isolated station in U.S.--Members who are assigned under PCS orders to duty on San Clemente

Island and Santa Rosa Island located 30 miles from the California coast--where dependents are not permitted to join the members are not regarded as being assigned to duty beyond the continental United

ferry fares, no additional payment for ferry costs is authorized. 41 Comp. Gen. 637 (1962).

Passenger charge included--Where the charges for crossing the English Channel via hovercraft are imposed for the transportation of the motor vehicle and not for the transportation of the driver and passengers, a member who drove his POV incident to a PCS, accompanied by his dependents, and incurred a ferry expense to cross the channel may not be reimbursed on the basis of applying a percentage of the vehicle fare assessed for its transportation across the English Channel to the transportation of the driver and passengers in the vehicle, the member having paid no fare for his or his dependents transportation via the hovercraft. 49 Comp. Gen. 416 (1970).

Cost reimbursement

Government shipment requirement--Where a member entitled under 10 U.S.C. 2634 and 37 U.S.C. 406(h) to Government arranged free ocean transportation of a POV upon a PCS overseas, personally arranges and pays for the commercial shipment of a POV, the cost of the ocean transportation, absent specific statutory authority, may not be reimbursed to the member, and the law authorizing the ocean transportation of POV conferring no shipping entitlement on a member personally, nor providing for the reimbursement of personal expense incurred for the commercial transportation arranged by him, the JTRs may not be amended to authorize reimbursement of transportation costs to members personally arranging for the shipment of motor vehicles to their permanently assigned overseas station. 45 Comp. Gen. 39 (1965). But see 51 Comp. Gen. 838 (1972).

Government erroneously refuses to ship--A member eligible to have his automobile shipped at Government expense pursuant to 10 U.S.C. 2634 incident to his transfer overseas, who when erroneously denied such transportation arranged and paid for shipping the vehicle by commercial means, is entitled to partial reimbursement in the amount the Government would have been charged by the Military Sealift Command (MSC) under its applicable schedule of rates if Government had arranged for the shipment. Regulations denying an eligible member reimbursement for the cost of shipping his privately owned vehicle overseas by commercial means when he personally arranges for the

cost of shipping his POV overseas service because the Government erroneously refused to do so may be amended to provide for partial reimbursement based on MSC costs. 45 Comp. Gen. 39 and other similar decisions modified. 51 Comp. Gen. 838 (1972).

III. REIMBURSEMENTS AND LIMITATIONS

A. Denial of Travel To Dependents Otherwise Qualified

Dependent on active duty

Cadet or midshipman--A cadet who is the son of a member is entitled to transportation allowance in his own right and, therefore, such cadet may not be regarded as a dependent for travel purposes incident to a PCS of the member when the PCS is made after the son entered the academy. 39 Comp. Gen. 786 (1960).

Member on excess leave--The fact that the spouse of a member who was transferred is a military nurse does not deprive the member to entitlement for her transportation since the wife traveled during a period that she was in excess leave status, a period during which she was not entitled in her own right to basic pay and allowances prescribed for active duty. 53 Comp. Gen. 289 (1973).

Dependent receiving Government travel as civilian

Civilian employee transferred at approximately same time as military member spouse is entitled to mileage plus per diem for PCS of herself and her children if her transfer in the civilian capacity is found to have been in Government's interest, but mileage allowance paid to member for travel of his dependents would consequently be for recovery, since duplicate payments of PCS entitlements may not be made for same purpose. 54 Comp. Gen. 892 (1975).

Member entitled to military and civilian transportation--Employee who receives appointment to manpower shortage position with Nuclear Regulatory Commission contemporaneously with discharge from military service has dual entitlement to transportation of household goods. Government will bear expenses of

employee's move up to the larger of the two entitlements. See B-177743, February 2, 1975, and B-173758, October 8, 1971.

However, the cost factors involved in the shipment of the household goods by the Army on a Government Bill of Lading and the cost factors which compose the commuted rate payable by civilian agencies may not be interchanged to increase or decrease an employee's entitlement. B-196535, April 22, 1980.

Travel by foreign vessel on airplane

Government payment for any portion of travel performed by a foreign registered vessel or airplane, if American registered vessels or certified air carriers are available by the usually traveled route, is prohibited by law and regulations. B-179445,

B. Temporary Duty Involved

Prior to reporting to permanent station

Prior to reporting to first permanent station--Appropriation is available for the transportation of dependents of members only in connection with permanent movement of the member, and therefore is not available for the transportation of the dependents of a Reserve member to his first duty station which was a temporary one. 21 Comp. Gen. 175 (1941). See also B-197401, June 11, 1980.

Prior to permanent change of station--A member upon completion of OCS is ordered on a 2-year overseas PCS tour without dependents, preceded by temporary duty at a place to which he moves his wife is not entitled to a mileage allowance for that travel on the basis of a subsequent assignment to an indefinite tour of overseas duty, permitting the concurrent travel of dependents, the member's status of entitlement to travel expenses for dependents arising not under the PCS orders, but acquired in connection with his indefinite tour of duty overseas after the wife's travel had been performed, travel not intended for the purpose of establishing a residence; therefore, the payment of a monetary allowance to the member for the travel of his wife to his temporary duty station is not authorized. 45 Comp. Gen. 316 (1965).

PCS after TDY for humanitarian reasons--The transportation allowance rights of members who, after issuance of temporary duty orders transferring the members for humanitarian or hardship reasons to a new station, are subsequently assigned to permanent duty at the same location as the temporary duty point or at another station are for determination on the basis of the permanent duty orders so that the member's entitlement to transportation of dependents at Government expense is from place where the dependents are located, upon receipt of the orders not to exceed the cost from the old to the new station, or, if the old permanent station is outside the United States, from the appropriate port of debarkation in the United States to the new station. 39 Comp. Gen. 188 (1959).

Prior to release

Transfer pending appellate review--A member in an eligible grade who is transferred to duty pending appellate review of a general court-martial conviction, is not entitled to dependent's transportation allowances, his assignment pending appellate review being of a temporary nature. 42 Comp. Gen. 568 (1963).

Transfer for separation processing--A member transferred under PCS orders from overseas to a station for separation is not entitled to travel expenses for his dependents to the separation station since the station at no time was the member's permanent duty station, notwithstanding his transfer was deemed a PCS and he was assigned to serve as executive officer. Whether a duty assignment is permanent or temporary is determined by considering orders, and the character, purpose, and duration of an assignment. The member's orders evidencing detachment from overseas for separation, the PCS orders and interim assignment as executive officer did not change the character of the separation transfer. 53 Comp. Gen. 44 (1973). See also 53 Comp. Gen. 105 (1973). B-192949, June 6, 1979; and B-195604, September 28, 1979.

Away from permanent station

Instruction of less than 20 weeks--While a member assigned as a student to a school for 20 weeks or more is entitled to transportation of dependents to such place, a member assigned as a student to two schools or courses of instruction totaling 20 weeks or more, but less than 20 weeks at any one place, is not entitled to reimbursement for travel of wife incident to such assignments, even though his orders stated the two classes were to be considered one course of instruction. 32 Comp. Gen. 569 (1953). See also 34 Comp. Gen. 260 (1954). B-193353, February 9, 1979.

Bona fide extension of temporary duty--Members ordered to TDY in connection with fitting out a vessel, to be followed by duty aboard the vessel when commissioned are not entitled to payment for the travel of dependents incident to the delayed commissioning of the vessel, for although the orders did not specifically provide a period of time for

contemplated by the JTR's for entitlement to dependent's travel, and the members' orders in substance being change of station orders to the vessel with intervening periods of temporary duty, there is no basis for reimbursement for dependents' travel. 43 Comp. Gen. 474 (1963).

Travel to awards ceremonies--There is no authority to issue regulations authorizing travel and transportation expenses of dependents to accompany members who are receiving honor awards, nor for payment of such expenses of dependents to receive awards themselves. 55 Comp. Gen. 1332 (1976).

Prior to overseas transfer

Training duty and overseas assignment--The authority for the transportation of the dependents of a member from his old to his new permanent duty station does not permit allowing a member assigned to 20 weeks or more of training duty under PCS orders that are silent as to his subsequent, immediate transfer to a restricted overseas area, the alternative right to move to the training station or to select a location, even though the member is officially advised of the overseas assignment, the training assignment constituting a PCS and not an intermediate assignment for further transfer overseas to a restricted area and, therefore the JTR's may not be amended to authorize the transportation of dependents to a location designated by a member. 46 Comp. Gen. 852 (1967).

En route to overseas assignment--The transportation of dependents of members to the temporary duty stations overseas to which the members have been assigned incident to an ordered overseas PCS is not provided for by 37 U.S.C. 406, and, therefore, there is no authority for the promulgation of regulations to permit the travel of dependents to a member's permanent duty station via his temporary duty points. 42 Comp. Gen. 287 (1962).

Change to with dependent tour overseas--A member who upon completion of OCS is ordered on a 2-year overseas PCS tour without dependents, preceded by temporary duty at a place to which he moves his wife is not entitled to a mileage allowance for that travel on the basis of a subsequent assignment to an indefinite tour of overseas duty, permitting the concurrent travel of dependents, the member's status

of entitlement to travel of dependents at Government expense arising not under the PCS orders, but acquired in connection with his indefinite tour of duty overseas after the wife's travel had been performed, travel not intended for the purpose of establishing a residence within the contemplation of the JTR's; therefore, the payment of a monetary allowance to the member for the travel of his wife to his temporary duty station is not authorized. 45 Comp. Gen. 316 (1965).

C. Alternate Origin Or Destination

Limited to travel between old and new station

Under the law, transportation of dependents of members incident to an ordered change of station is limited to the distance from the old to the new permanent station, and, in the absence of specific statutory provisions, there is no authority for the promulgation of regulations which would authorize excess transportation of dependents of personnel formerly in ineligible grades or newly acquired dependents of eligible personnel based on an ordered PCS alone, whether the stations involved are overseas or in the United States. 37 Comp. Gen. 715 (1958). See also 27 Comp. Gen. 510 (1948); 26 Comp. Gen. 339 (1946); 24 Comp. Gen. 927 (1945); 4 Comp. Gen. 438 (1924); 2 Comp. Gen. 567 (1923).

From temporary station to new station

A member whose wife traveled at personal expense from their home to his temporary duty station where she was residing when he received orders which detached him from his old permanent station and assigned him to a new permanent station near the temporary duty location may be reimbursed for dependent's travel not to exceed the distance from his home to the old permanent station and from the temporary duty station to the new permanent station. 34 Comp. Gen. 467 (1955).

D. Modes Of Transportation

Transoceanic ferry

A member who, after receiving payment on a mileage basis for travel incident to a PCS from the United States to Newfoundland claims reimbursement for the

cost of ferry travel between Nova Scotia and Newfoundland may not have the ferry travel regarded as "transoceanic travel" in view of the specific exclusion in the definition of "transoceanic travel" of travel between the United States and the island portion of Newfoundland; therefore, the member having received payment for his travel and his dependents by POV on a mileage basis pursuant to the JTRs', which payment is a commutation of all transportation expenses, including ferry fares, no additional payment for ferry costs is authorized. 41 Comp. Gen. 637 (1962).

Air travel using special military leave fare

Marine Corps member and his dependent who perform at personal expense circuitous transoceanic travel by commercial airline authorized by permanent change-of-station orders is entitled to reimbursement at Military Airlift Command rates for direct travel between duty stations despite having used commercial airline's reduced military fare contrary to Department of Defense (DOD) instruction providing that such fares may not be used by active duty members whose travel will be paid by DOD. B-198660, August 19, 1980. Also compare 51 Comp. Gen. 828 (1972).

Mixed modes

Travel by POV and air--Although the JTR's, prescribing that when travel of dependents of members is performed entirely or in part by a POV, the official highway distance is the official distance for mileage payment purposes does not contain a provision in the JTRs providing that the mode of transportation used by a member between his duty station and the local common carrier terminal may be disregarded in determining whether the travel is performed by common carrier, in computing mileage payments for travel by identical means, no distinction between a member and his dependents is required. However, where incident to a PCS, dependents of a member travel by POV to an air terminal that is not the local common carrier terminal for the old duty station, the member is entitled to a mileage allowance based on the official carrier mileage, but only to payment on the basis of the official highway distance. 47 Comp. Gen. 470 (1968).

Use of different mode by some dependents--Statute authorizing the travel and transportation of dependents and the regulations issued pursuant thereto

entitle a member ordered to make a PCS to be furnished transportation for all eligible dependents and therefore, where a member has dependents in such numbers that when traveling at the same time between the same points all cannot travel by POV and some necessarily travel by common carrier on transportation requests, said member may be reimbursed to the value of the transportation in kind furnished for the others. 33 Comp. Gen. 77 (1953).

Government transportation

Available Government transportation not used--When transportation by Government vessel is available but not utilized and transoceanic travel is performed at personal expense, the monetary allowance in lieu of transportation is payable from old station to port of embarkation for Government vessels. Thus, where a member's dependents traveled to Canal Zone at personal expense by commercial air carrier pursuant to member's PCS from Texas to the Canal Zone and after issuance of travel authorization, monetary allowance is payable in lieu of transportation of dependents computed on distance from Texas to New York, port of embarkation for Government vessels. 37 Comp. Gen. 274 (1957).

To place of retirement overseas--Retired member who selected foreign city as home without requesting permission to reside in a foreign country as required by Army regulations, and who with wife traveled to such an overseas home by commercial means after personal reasons made it necessary to decline use of available Government transportation, is not entitled under the JTR's to reimbursement for his traveling expenses or for the transportation of his wife. 34 Comp. Gen. 130 (1954).

Comparative cost when commercial means used--In the determination of the amount reimbursable to members for transoceanic travel for themselves and their dependents after the conversion of the Military Sea Transportation Service (MSTS) and the Military Air Transportation Service (MATS) to industrial fund financed activities when different charges for each service were levied, the proper measure for application is the cost of the least expensive available transportation service as between MSTS and MATS that would have met the transportation requirements of the traveler and his dependents. 41 Comp. Gen. 100 (1961).

Fear of air travel

Where only Government air transportation is available to a member upon change of duty station from overseas to the United States and because his wife is afraid to travel by air he is authorized to travel at his own expense by commercial surface transoceanic travel to the extent it would have cost the Government to

permanent change of station" upon the issuance of certificate of prolonged treatment. 48 Comp. Gen. 603 (1969).

Medical care for dependent

Illness and death of dependent--A member's dependents who were authorized, incident to a minor child's illness, to return from overseas station to a place in the United States for the dependent's hospitalization, and who subsequently travel to the member's home of record incident to the child's death and burial may not have the travel beyond the place of hospitalization designated as the ultimate destination in the orders regarded as authorized travel for reimbursement purposes and, therefore, the travel allowance payable to the member is limited to the cost of dependent's travel from the overseas station to the place of hospitalization and from there to the member's new station under orders which authorized his reassignment to a duty station in the United States. 43 Comp. Gen. 152 (1963).

Escort travel--A member stationed overseas whose wife under orders travels by POV to and from a hospital for medical treatment may not be paid a mileage allowance for the roundtrip transportation, reimbursement under the law and regulations being limited to actual expenses, whether a dependent travels alone or with an attendant, absent specific authorization for commuted payments, such as mileage, monetary allowance in lieu of transportation, or per diem. A member who transports a dependent to a medical facility in his POV for which he is entitled to a travel allowance would not be entitled to an additional amount on behalf of dependent, the travel allowance being in lieu of actual expenses. 47 Comp. Gen. 743 (1968).

Medical examinations for passport--The fees for the medical examination of alien dependents of members in connection with obtaining visas is not a reimbursable expense, 37 U.S.C. 406(a) and (c) authorizing only transportation of dependents at Government expense and, although the Secretaries may authorize reimbursement for the same miscellaneous transportation expenses for dependents as is authorized for members, such as passports, visa fees, and photographs and birth certificate costs, but not including medical examination fees, absent express authority

the physical examination fees considered medical and not transportation costs and incurred for the benefit of the member and his dependents are not proper charges against appropriated funds and the JTR's may not be amended to authorize the reimbursement of medical examination fees for alien dependents incident to securing visas. 44 Comp. Gen. 339 (1964).

Lodging and subsistence expense not payable--In the absence of statutory authority, the Joint Travel Regulations may not be amended to authorize lodging and subsistence expenses of dependents of military personnel outside the United States traveling to obtain medical care since only transportation for medical care is specifically authorized for such dependents under 10 U.S.C. 1040(a) (1976). B-194616, June 4, 1980.

Accrued leave at time of enlistment extension-- Under the act of January 2, 1968 (10 U.S.C. 509), which authorizes the extension and reextensions of a term of enlistment for not to exceed 4 years by members of all the services, and provides entitlement to the same pay and allowances as though the member had reenlisted, and considers that all extensions of an enlistment are one continuous extension, an accrued leave settlement is restricted to the first extension of an enlistment. In the absence of legislation prior to the 1968 act of any provision granting the same benefits upon the reextensions of an enlistment, the language of the 1968 act is construed as restricting an accrued leave settlement to the first extension of an enlistment. 48 Comp. Gen. 127 (1968).

Members in missing status-- Although section 847 of the Department of Defense Appropriation Act, 1978 Public Law 95-111, 91 Stat. 886, 907 (1977) prohibits the use of funds appropriated by it for payment to any member of the uniformed service for unused accrued leave in excess of 60 days, this section does not operate to prevent payment to members in a missing status for unused accrued leave in excess of 60 days pursuant to 37 U.S.C. 501(h) and 10 U.S.C. 701(g) since the sole purpose of the appropriation restriction is to prevent the sale of unused accrued leave upon reenlistment. B-191457, August 7, 1978.

Accrued leave in excess of 60 days at retirement or death-- Under 37 U.S.C. 501(f) and 1976 and 1977 appropriation acts payment for uniformed services members' accrued leave is limited to no more than 60 days' unused accrued leave during their military careers. No exceptions to that limit are provided which would authorize payment in excess of 60 days for an Air Force member who dies on active duty or retires on medical disability with more than 60 days' accrued leave. Also, claims for such leave do not contain such elements of legal liability or equity as would warrant submission to Congress under the Meritorious Claims Act, 31 U.S.C. 236 (1976). B-199071, July 16, 1980.

Computation of payment

Station allowances-- The lump-sum payment for accrued leave, not to exceed 60 days, provided in 37 U.S.C. 501(b) for all members of the uniformed services upon separation is authorized to be computed at regular military compensation consisting of basic

pay and subsistence and quarters allowances. Therefore, an Army officer upon retirement entitled to payment pursuant to paragraph 40401 and Table 4-4-5 of the Department of Defense Military Pay and Allowances Entitlements Manual may not have his payment increased by including station housing and cost-of-living allowances in the computation of the 60 days' accrued leave to his credit as these allowances are not payable by virtue of membership in the uniformed services but accrue incident to particular duty assignments. 51 Comp. Gen. 312 (1971).

Basic allowances for subsistence (BAS) and for quarters (BAQ)--An amendment to 37 U.S.C. § 501(b) deleted inclusion of allowances in lump-sum leave payments to military members upon discharge; however, a saving provision retained entitlement to include the allowances for leave accrued prior to the amendment. Although the claimant contends that the services' regulation determining when a member will be charged with use of preamendment leave frustrates congressional intent of the saving provision, in view of the services' authority to prescribe regulations for accrual and use of leave, the language and legislative history of the amendment, the regulation is proper. Although member had 60 days accrued leave at the time of his retirement, as the member used 6 days more leave than he had accrued in a post-amendment year which under regulation were charged to his 60-day carryover of preamendment accrued leave, BAS and BAQ may not be included in computation for 6 days accrued leave. 58 Comp. Gen. 635 (1979).

Additional pay for retention on vessel in foreign waters--The 25 percent increase in basic pay received pursuant to 10 U.S.C. 5540 by naval enlisted members who are retained on active duty on vessels in foreign waters after expiration of enlistment, not being considered base and longevity pay or allowances within the meaning of section 4(c) of the Armed Forces Leave Act of 1946, is not for inclusion in the computation of payments for unused leave upon discharge or release from active duty. 38 Comp. Gen. 691 (1959).

Enhanced pay for members holding special positions--Under section 4(c) of the Armed Forces Leave Act of 1946 the compensation for unused leave is based on the pay and allowances received on the date of discharge rather than the commissioned or enlisted grade of the member and, therefore, an enlisted

Marine Corps member who was serving as band leader and receiving the pay of an officer on date of discharge is entitled to payment for accrued unused leave computed on the basis of the pay of the commissioned grade. 35 Comp. Gen. 699 (1956).

Additional pay of permanent professors at United States Air Force Academy--Permanent professor at United States Air Force Academy with over 36 years of active service computed under 37 U.S.C. § 205, is entitled to \$250 per month "additional pay" pursuant to 37 U.S.C. § 203(b). Such additional pay is not an element of base (rank) and longevity (years of service) pay, but accrues to particular individuals incident to a particular duty assignment, and as such does not constitute "basic pay" for the purposes of computing lump-sum leave entitlements in accordance with 37 U.S.C. § 501(b)(1). B-192818, February 9, 1979.

Erroneous payment for accrued leave

Record correction - restored to active duty--Reservists who receive payments for unused accrued leave under 37 U.S.C. 501 (1970) upon involuntary separation from active duty, but whose records are corrected to expunge the fact of such separation, are liable to repay amounts received for unused leave; however, they are entitled to be recredited for days of unused leave up to the 60-day maximum prescribed by 37 U.S.C. 501(f) (1970). 56 Comp. Gen. 587 (1977).

Record correction - restored to active duty - waiver of erroneous payments--Requests for waiver of erroneous payments submitted by Army members retroactively restored to active duty through the correction of their military records, will ordinarily be favorably considered only to an extent which will prevent the indebtedness upon his actual return to duty, however, waiver of further amounts may be granted for leave payments required to be collected but where the leave cannot be restored, but has been lost, as a result of the statutory limitation on leave accrual. 57 Comp. Gen. 554 (1978).

Effect of disciplinary or adverse administrative action

Court-martial sentence which includes forfeiture of pay and allowances--A Marine Corps officer whose sentence for violating the Uniform Code of Military Justice on November 22, 1972, was approved as to

the forfeiture of pay and allowances, but not as to dismissal, and finally executed on December 18, 1972, following which the officer was detached from duty and ordered to travel to his home of record without entitlement to active duty pay and allowances, where he was released on December 31, 1972, and transferred to the Reserves with 45 days' unused leave is entitled to pay and allowances through December 17, 1972, pursuant to the interpretation of 10 U.S.C. 857 and 871 that the day of the execution of a sentence controls, but not to payment for the unused leave as the forfeiture imposed was "all pay and allowances." 52 Comp. Gen. 909 (1973).

Court-martial set aside and member restored to all rights--A service member's enlistment expired after he was confined as a result of a court-martial conviction. Thereafter, he was placed in a parole status in lieu of remaining confinement time, which status was terminated on date confinement would have ended. He was then placed in an excess leave status pending appellate review of his conviction. Upon review the conviction and sentence were set aside and all rights restored including leave accrual. He is entitled to leave accrual through the last day of parole, not to exceed 60 days. While pay and allowances accrued only through last day of parole (59 Comp. Gen. 12) payment of lump-sum leave is to be based on rates of basic pay in effect on the date of the member's discharge, even though he was not returned to a duty status. B-194948, July 9, 1980, 59 Comp. Gen. ____.

Records corrected to show honorable discharge but not to delete court-martial pay forfeiture--A dishonorably discharged enlisted man whose military records were corrected to show honorable discharge, but not corrected to delete pay forfeiture provisions of court-martial sentence, is entitled to travel allowance and mustering-out pay which are incident to honorable discharge; however, payment may not be made for any unused leave which is part of member's compensation for active military service. 34 Comp. Gen. 95 (1954). See also B-178320, August 9, 1977.

Records corrected to rescind court-martial sentence but not to show active duty status--Although an officer of the United States continued on active duty for 2 months subsequent to the imposition of a court sentence, the correction of his military records to show the rescission of the court sentence

basis that he was separated for "homosexual tendencies" and not "substandard duty performance" (which requires computation on less favorable formula), when Air Force records show authority for his separation as regulation providing for separation for substandard duty performance. Separation from Air Force and reasons therefor are within jurisdiction of Air Force. If officer believes authority given for his separation is erroneous, he may seek to have his record corrected by Air Force under 10 U.S.C. 1552 (1976). B-192220, November 17, 1978.

Records correction - erroneous payment - liability

When Army officers involuntarily separated from active duty subsequently obtain records correction to show continuation on active duty, readjustment payments made upon separation under 10 U.S.C. 687 (together with payments received for accrued leave on separation and for interim Reserve duty) are thereby rendered erroneous, and such payments may therefore be considered for waiver under 10 U.S.C. 2774. 56 Comp. Gen. 587 (1977). See also B-195558, December 14, 1979.

Transferred to retired reserve

A retired commander, USNR, had 28 years, 6 months, and 28 days of service for basic pay purposes and



of a readjustment payment made to a member of a Reserve component who qualifies for retired pay under any provision of titles 10 or 14 that authorizes retirement upon completion of 20 years of active service. 46 Comp. Gen. 684 (1967); 46 Comp. Gen. 107 (1966).

C. Disability Severance Pay

Entitlement

Less than 6 months of active service--The legislative history of the disability severance pay provisions in section 403 of the Career Compensation Act of 1949 indicates a congressional intent that members of the uniformed services with less than 6 months of active service would not be entitled to severance pay, and the specific elimination of fractions of a year of less than 6 months in the computation of severance pay in 10 U.S.C. 1212(b) requires the conclusion that members with less than 6 months of active service at time of separation are not entitled to disability severance pay. 39 Comp. Gen. 291 (1959).

Separation based on disability is ineffective--An enlisted member who was paid disability severance pay, and lump-sum leave incident to a discharge which was subsequently determined not to have terminated the member's active duty status because the member was hospitalized for a new disability prior to the effective date of the discharge is considered in an active duty status after the discharge so that checkage should be made for payments made incident to the ineffective discharge. 39 Comp. Gen. 766 (1960).

Discharge without severance pay - attempted retroactive cancellation--Where a member of the Marine Corps was discharged without severance pay because of a disability, and subsequently the Secretary of the Navy directed that action to be taken to issue a discharge with such pay, the member is not entitled to severance pay under section 402(a) of the Career Compensation Act of 1949, as the purported retroactive cancellation of the original discharge is ineffective in the absence of evidence to show that it was procured through fraud or misrepresentation. 31 Comp. Gen. 665 (1952).

Discharge without severance pay - claim barred by 6-year statute of limitations--The exception to the 6-year statute of limitations, 31 U.S.C. 71a, tolling the running of the 6-year period for members of the armed forces in wartime, is applicable only to members on active duty and does not apply to the claim of a former Navy member for retired pay which first accrued while he was on the temporary disability retired list and for severance pay which first accrued when he was discharged from that list. B-197485, May 16, 1980, 59 Comp. Gen. ____.

Disability incurred while in pay forfeiture status--A member of uniformed services who incurred a disability while in a pay forfeiture status is not entitled to the disability severance pay which is authorized by the Career Compensation Act of 1949 for members who incur disability while entitled to receive basic pay, even though the Secretary of the Department remits the unexecuted portion of the sentence including all uncollected forfeitures. 34 Comp. Gen. 65 (1954).

Disability incurred during period of confinement after enlistment expired--An ARMY enlisted member whose enlistment expired while he was in confinement pending appellate review of a court-martial sentence was not entitled to pay subsequent to the expiration of his enlistment and, therefore, is not entitled to disability retirement or severance pay under 10 U.S.C. 1201 or 1203 for a disability incurred during that period. B-192082, December 21, 1978.

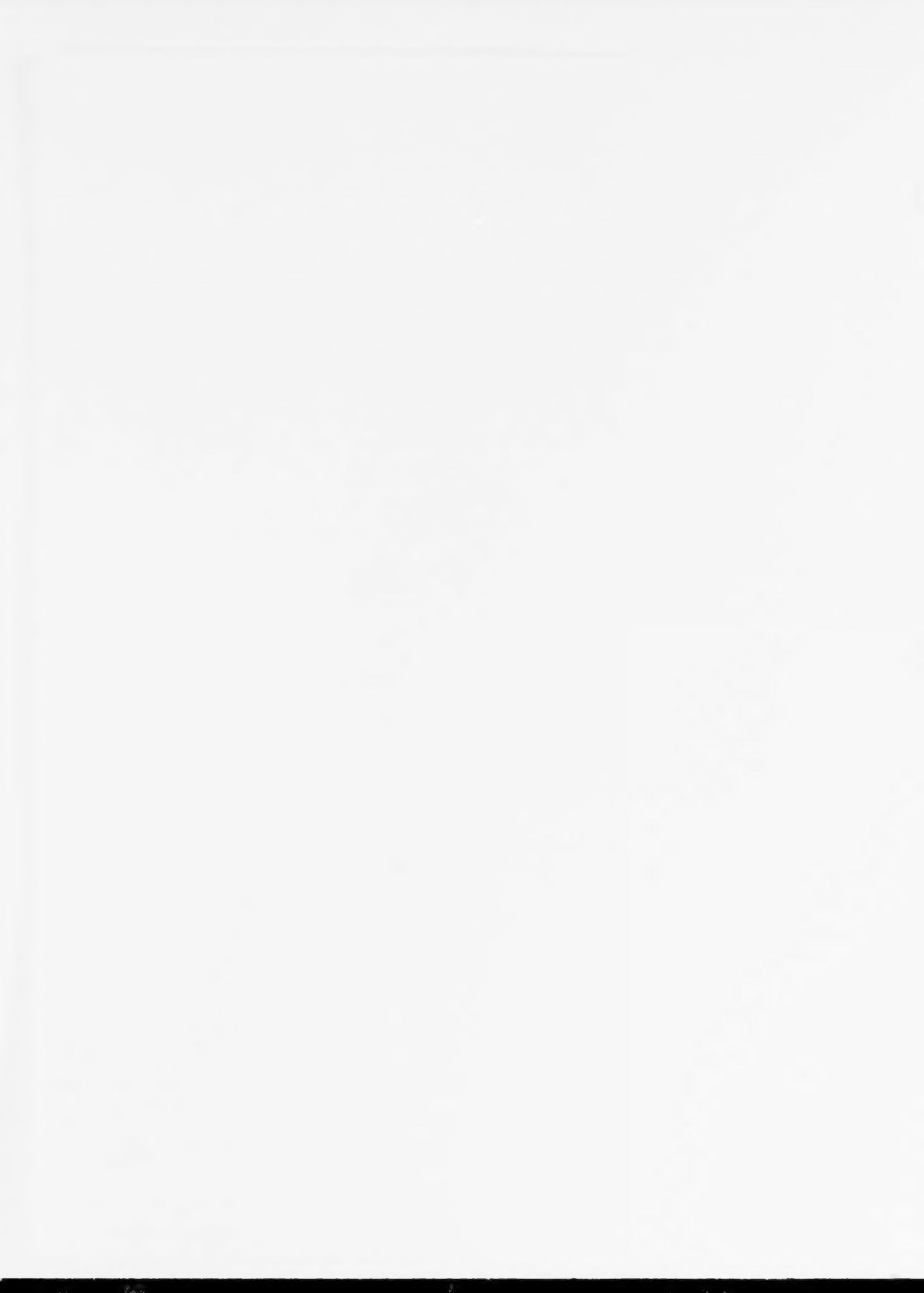
Convicted of certain crimes--Severance pay authorized under section 405 of the Career Compensation Act of 1949 to members of the uniformed services upon separation is a lump-sum payment, as distinguished from "retired," "retirement," "retainer," or "equivalent pay" which refer to payments of a continuing nature, and, therefore, the term "equivalent pay" as used in act of September 1, 1954, which prohibits annuity payments to members or former members who are, or have been, convicted of certain offenses, does not preclude payment of severance pay. 35 Comp. Gen. 293 (1955).

Medically unfit at time of induction--Where medically unfit persons were released on the basis of a void induction prior to 48 Comp. Gen. 377 holding that physically or mentally unqualified inductees into

the military service are entitled to basic pay, and if qualified to disability retirement or separation under 10 U.S.C., chapter 61, the military records of the erroneously released persons may be corrected to show discharge as of the date of release from military custody and control, any disability retirement or severance pay determination effected under 10 U.S.C. 1552 to consider the aggravation of an unfit condition acquired while on duty. Absent a change in a physical condition while on active duty, discharge may be made for the convenience of the Government without disability retirement or severance pay, and all discharged persons may be informed of their entitlement to the pay and allowances that accrued prior to release. 49 Comp. Gen. 77 (1969).

Computation

Higher permanent Reserve grade at time of separation--The similarity of language in the disability retired pay provisions in section 402(d) of the Career Compensation Act of 1949, with respect



6 months' death gratuity must comply with the formalities prescribed by regulations, and any departure from the established procedure must be entirely free from doubt, fraud, or mistake. 34 Comp. Gen. 616 (1955).

Effect of misnomer in designation--A misnomer or an inaccuracy in the name of a beneficiary designated to receive the 6 months' death gratuity pay does not render the designation instrument inoperative provided the person whom the decedent intended as the beneficiary can be identified with clearness and certainty by the description in the designation instrument. 32 Comp. Gen. 249 (1952).

Nondesignated parent vs. designated person standing in loco parentis--The 6 months' death gratuity authorized in 10 U.S.C. 1477 that is payable incident to the death of an enlisted member of the uniformed services and which is claimed by the decedent's natural father and a cousin designated to receive the gratuity who is claiming a loco parentis relationship may not be paid to either claimant, absent more conclusive evidence or a judicial determination of entitlement. The evidence presented by both claimants is in conflict, as are the numerous court decisions respecting the determination of the term "in loco parentis," and although a close relationship existed between the decedent and the family of the person alleging the loco parentis relationship, the member prior to enlistment was self-supporting and lived where he chose. 49 Comp. Gen. 167 (1969).

Member must be on active duty or have been separated from active service within 120 days

National guard officer - not in duty status at time of death - absence of advance orders--A National guard officer who stated he planned to perform military duty on the day he died, but who had not been ordered in advance to perform such duty, may not properly be placed in a duty status retroactively after his death, notwithstanding that on other occasions he had received credit for military duty performed without advance authorization, since the regulations requiring advance orders may not be disregarded as a matter of routine, and retroactive orders are permissible only to correct an apparent error or to confirm previously issued verbal orders. B-194189, January 7, 1980.

Date of death unknown following separation from active duty--Where the exact hour or date of death of a retired officer of the uniformed service cannot be determined and the official record reflects that the body of the officer was found 121 days after his release from active duty, the death gratuity authorized by 10 U.S.C. 1476(a) to be paid to the widow of an officer dying within a 120-day period after release from active duty may not be paid. As neither the statement of the doctor signing the death certificate that death could have occurred on the 120th day nor any other document rebuts the official record that the death of the officer occurred more than 120 days after release from active duty, the matter is too doubtful to warrant payment of the death gratuity. 46 Comp. Gen. 409 (1966).

Death in confinement after expiration of enlistment--An enlisted member of the uniformed services who dies subsequent to the expiration of his enlistment and while a prisoner in confinement pending appellate review of an unexecuted court-martial sentence is regarded as having his enlistment expire by operation of law rather than as the result of the imposition of the court-martial sentence then pending appellate review, so that the issuance after the member's death of a court-martial order by the Secretary of the Army to restore the rights, benefits, privileges and property of which the deceased may have been deprived by virtue of the findings of guilty and sentence could not have the effect of placing the member in a pay status after the expiration of the enlistment to permit payment of arrears of pay for the following period of confinement or of the death gratuity. 40 Comp. Gen. 202 (1960).

Fraudulent enlistment undiscovered at time of death--A fraudulent enlistment is voidable at the option of the Government. Where the fraudulent character of an enlistment did not become known and the deceased was actually carried on the rolls as an enlisted man of the Army at date of death, he was an enlisted man "on the active list of the Regular Army," and his widow is entitled to the death gratuity. 9 Comp. Gen. 26 (1929).

AWOL but not in desertion status at time of death--A member of the Armed Forces who died by suicide

during a period of absence without leave occurring after the effective date of section 4(b) of the Armed Forces Leave Act of 1946 is to be regarded as continuing in a pay status during such absence for the purpose of computing the 6 months' death gratuity at the rate of pay received at the date of death and such gratuity, not being a part of the pay and allowances forfeited by section 4(b) for absence without leave, may be paid upon administrative determination that death was not due to misconduct. 29 Comp. Gen. 294 (1950). See also 31 Comp. Gen. 645 (1952).

or persons paying creditors, for funeral and last illness expenses. 52 Comp. Gen. 113 (1972).

Designated beneficiary kills member--Claim of widow of deceased service member for unpaid pay and allowances as member's designated beneficiary (10 U.S.C. 2771), where she admitted killing him and was indicted for murder, is denied, even though she claimed self-defense and nolle prosequi was entered on indictment, since due to certain information of record, the lack of felonious intent cannot be established. 55 Comp. Gen. 1033 (1976).

Spouse accessory to member's murder--Murdered Navy member's wife, who was found guilty of being an accessory after the fact to his murder, is not entitled to receive arrears of pay due the member in the absence of evidence that she was not involved in the murder or that she did not participate in the murder with felonious or wrongful intent, since it is a fundamental rule of law that no person shall be permitted to profit by his own wrongful act. B-187743, July 7, 1977.

Legal entity as designated beneficiary--The word "person" as used in 10 U.S.C. 2771(a) should be construed similarly to that word as used in 5 U.S.C. § 5582(b) and, thus, may include a legal entity other than a natural person. Therefore, an Army member's designation as beneficiary of his unpaid retired pay upon his death of the United States Soldiers' Home, a Government instrumentality with the power to accept donations of money or property, was a valid designation under 10 U.S.C. 2771(a)(1) and the Home's claim may be allowed. B-187037, October 22, 1976.

When law of domicile governs payment--Settlement of accounts of deceased members of the armed forces is provided for by 10 U.S.C. § 2771 (1970). In the absence of a designated beneficiary, a surviving spouse, child, or parent, or a legal representative of the estate, the person entitled under the law of the domicile of the deceased member is entitled to payment. B-191818, November 21, 1978. See also B-199455, September 29, 1980.

Where law of domicile of deceased member of armed forces is made controlling by 10 U.S.C. § 2771(a)(6) (1970), and where stepdaughter-in-law of marriage dissolved by final decree of divorce in 1950 has no

legally recognizable status under the domicile's law, claim for amounts due deceased member of armed forces, asserted by stepdaughter-in-law, was properly denied. B-191818, November 21, 1978.

Proper settlement under law of domicile - payment bars recovery by later claimant--A settlement was made under 10 U.S.C. 2771(a)(6) to those properly qualified under the laws of succession of that state based on their assertion of being the deceased member's sole next of kin, and there was no indication of the existence of any other qualified persons. Where another claim was thereafter presented, the Government has obtained a good acquittance by the settlement and under 10 U.S.C. 2771(d) such payment bars recovery by the later claimant of any portion of the settlement. B-199455, September 29, 1980.

Member in missing status subsequently determined to be dead

Pay increases--The widow and designated beneficiary of an Air Force captain held to be in a missing in action status from March 28, 1969, until that status was terminated on March 19, 1970, on the basis of evidence establishing his death, may be paid the increase in basic pay provided by the Federal Employees Salary Act of 1970, and implemented by Executive Order No. 11525, for the period January 1, 1970, the retroactive effective date of the act, through March 19, 1970, absent a contrary determination under 37 U.S.C. 556(c) by the Secretary of the Air Force. While the Department of Defense Memorandum implementing the Executive order permits a retroactive increase in pay for any active service performed in the case of a person "who died" after December 31, 1969, but before April 15, 1970, such authority together with section 5 of the salary act on which it is based is considered to have reference to a termination of pay because of death. 50 Comp. Gen. 148 (1970).

Distribution of amount accruing to member's account including deposits in Uniformed Services Savings Deposit Program--The father of a member in a missing status is not entitled to the accrued pay and allowances, including amounts deposited in the Uniformed Services Savings Deposit Program (USSDP), when the member is determined to have been killed in action, even though he was designated to receive an allotment of 100 percent of the member's pay and allowances if

he went in a missing status, since the Secretary concerned has the authority under 37 U.S.C. 551-558 to discontinue such an allotment. the amounts accruing to member's account, including deposits in the USSDP are then distributed in accordance with 10 U.S.C. 2771, in this case to the designated beneficiaries, his sisters.
B-196808, July 17, 1980.

Designated beneficiary (spouse) remarries
while member missing--Any amounts due a member of the Marine Corps who when he entered a missing

1372(3), nor are the examinations within purview of Brandt v. United States, 155 Ct. Cl. 345, holding that where physical examinations in connection with promotion and retirement are given close together, the physical disability can be said to be the result of an examination for promotion. 50 Comp. Gen. 508 (1971). See also 50 Comp. Gen. 314 (1970); 42 Comp. Gen. 314 (1962); 41 Comp. Gen. 749 (1962); and 40 Comp. Gen. 240 (1960).

A service member passed a promotion physical examination and was ordered promoted to the grade of major effective at a later date. In a later physical examination prior to the promotion effective date a disability was found and he was retired for physical disability under 10 U.S.C. 1201, in the grade of captain, as determined under 10 U.S.C. 1372(1). His claim that he should be retired as a major under 10 U.S.C. 1372(3) for retired pay purposes may not be allowed since that provision permits the higher grade only where the disability is found to exist as a result of a promotion physical, which was not the case. B-195483, November 14, 1979.

A service member (captain) passed a promotion physical examination and was ordered promoted to the grade of major effective at a later date. In a later physical examination prior to the promotion effective date a disability was found and he was ordered retired. His claim that his retired pay should be based on the grade of major because the medical evaluation board finding that he was medically unfit was improper because subsequent service examinations found him fit may not be allowed. Under 10 U.S.C. 1216, the Secretary of the service concerned is vested with the powers, functions and duties incident to determining fitness for duty of any member of that service and percentage of disability, and not the GAO. B-195483, November 14, 1979.

Disability determination subsequent to release -
record correction action

The retired pay of an Air Force officer retired effective April 1, 1963, who by a correction of military records is placed on the temporary disability retired list as of March 31, 1963, with entitlement to disability retired pay effective April 1, 1963, from which list he is removed on March 11, 1968, properly was for computation under section 5(a)(1) and not 5(a)(2) of the Uniformed Services Pay Act of 1963, the officer's entitlement to retired pay on April 1, 1963, not having occurred by force of the Uniform Retirement Date Act, but by the action of the Secretary, and the officer, therefore, was not overpaid retired pay commencing October 1, 1963, computed at 75 percent of the monthly basic pay of his grade fixed by the 1963 pay act. 48 Comp. Gen. 329 (1968). See also 42 Comp. Gen. 317 (1962); and 41 Comp. Gen. 597 (1962).

Tax consequences of record correction action

A correction of military records under 10 U.S.C. 1552 to show that a deceased officer had been retired for disability and not years of service pursuant to 10 U.S.C. 8911, created entitlement to a refund of the income taxes withheld since section 104(a)(4) of the Internal Revenue Code of 1954, as amended, provides that disability retired pay is not subject to Federal income tax. The claim of the officer's widow for refund of taxes for the years denied by the Internal Revenue Service as barred by the applicable statute of limitations may be allowed as being a claim within the meaning of 10 U.S.C. 1552(c) in view of Clyde A. Ray v. United States, decided January 21, 1972 (197 Ct. Cl. 1), in which the court held the plaintiff's claim was not for the refund of taxes but to effectuate the administrative remedy allowed under 10 U.S.C. 1552, and that shelter of income from taxation is a "pecuniary benefit" flowing from the record correction. 52 Comp. Gen. 420 (1973).

Court order restraining discharge

A certificate purporting to discharge a member of the Naval Reserve on December 5, 1961, which was not delivered because of a court restraining order did not effect the member's discharge, the mere preparation of the instrument of discharge without delivery not

terminating the military status of the member who had been placed on the temporary disability retired list on January 1, 1957, and paid retired pay until December 1, 1961, when the payments were suspended; therefore, upon transfer under orders dated January 8, 1964, from the temporary disability retired list to the permanent disability retired list with 40 percent disability, effective November 7, 1961, the discontinuance of retired pay as of November 30, 1961, not having terminated the member's status on the temporary disability retired list and his transfer to the permanent disability retired list being valid, he is entitled to disability retired pay on and after November 7, 1961, based on the disability rating of 40 percent. 43 Comp. Gen. 731 (1964).

II. RETIREMENT FOR YEARS OF SERVICE

A. Retired Grade

Grade at time of retirement

Time in-grade restrictions inapplicable in selecting retirement date--Where an Army or Air Force Officer is retired in the grade of lieutenant general or general under 10 U.S.C. 3962 or 8962, the time-in-grade restrictions in 10 U.S.C. 3963 or 8963 do not apply in selecting an earlier hypothetical retirement date for retired pay computation pursuant to 10 U.S.C. 1401a(f). B-189029, September 9, 1980.

Mandatory retirement and advancement on active list on same day--Several rear admirals, both upper and lower half, are to be mandatorily retired under provisions of 10 U.S.C. 6394 on July 1, 1975, and as a result of retirement of rear admirals (upper half) on that date, some retiring rear admirals (lower half) would be entitled to basic pay as a rear admiral (upper half) in accordance with 37 U.S.C. 202, if considered to be serving on active list subsequent to the retirement of the rear admirals (upper half). These rear admirals are not entitled to compute retired pay on basis of rear admiral (upper half) since they also are to be mandatorily retired on July 1, 1975, and as a result will not be serving in that grade on the active list on that date. 54 Comp. Gen. 1090 (1975).

Member reduced after becoming eligible for retirement--Under 10 U.S.C. 1401a(f) (Supp. V, 1975) the retainer pay of a former Navy or Marine Corps member

who initially became entitled to that pay on or after January 1, 1971, may not be less than the retainer pay to which he would be entitled if transferred to the Fleet Reserve or Fleet Marine Corps Reserve at an earlier date, adjusted to reflect applicable increases in such pay under that section even though transferred to Fleet Reserve or Fleet Marine Corps Reserve at a lower pay grade because of unsatisfactory performance

of duty or as result of disciplinary action. 56 Comp. Gen. 740 (1977).

Advancement on retired list to highest grade satisfactorily held

In general--Where an existing statute authorizes computation of the retired pay of a member or former member on the basis of the pay of the grade in which the individual had served satisfactorily and which is higher than the pay of the grade on which he otherwise is entitled to compute his retired pay, we will authorize payment, or pass to credit in the disbursing officer's accounts, a payment of retired pay computed on the pay of the higher grade, without regard to whether that grade was a temporary or permanent grade, even though the armed service in which the individual held that higher grade is not the service in which he retired. However, such action in any particular case will depend upon an appropriate administrative determination as to satisfactory service where such determination is required by applicable statutes. 49 Comp. Gen. 618 (1970). See also 50 Comp. Gen. 607 (1971); 50 Comp. Gen. 586 (1971); 49 Comp. Gen. 113 (1969); and 48 Comp. Gen. 163 (1968).

Determination of "satisfactory service" in higher grade--While no amount of service is specified in 10 U.S.C. 6151 before the Secretary of the Navy can determine that a member has served satisfactorily in a higher grade or rank under a temporary appointment to be entitled to retired pay based on the higher grade, unless active service is actually performed in the temporary grade under conditions requiring duty comparable to that encountered during a normal tour of active duty, there would be no evidence upon which a determination of satisfactory service could be made; therefore, 10 U.S.C. 6151 must be construed as contemplating that the determinations will be made on the basis of sufficient actual service in the temporary grade to permit a genuine appraisal of the quality of the service of the member in that grade. 41 Comp. Gen. 11 (1961).

Promotions while in missing status do not require 6-month in-grade requirements--Survivor Benefit Plan annuity for the surviving spouse of member who dies while on active duty when otherwise eligible to retire, is computed on grade and years of service as though member retired on the day he died. Computation includes limitations on grade for retirement

purposes such as the 6-month in grade requirement. However, where a member who was missing in action is determined to have been killed in action, the 6-month in grade requirement does not apply since promotions received while in a missing status are "fully effective for all purposes," under 37 U.S.C. 552(a). B-195625, February 28, 1980.

Retired pay for extraordinary heroism award - effect of advancement to officer grade--A master sergeant who when retired under 10 U.S.C. 3914 is awarded a 10 percent increase in retired pay by reason of extraordinary heroism performed in the line of duty, upon advancement to the officer rank of captain on the retired list pursuant to 10 U.S.C. 3964, is not eligible to continue receiving the 10 percent additional retired pay authorized only for enlisted members, the entitlement to the increase not attaching by reason of his retirement, and 10 U.S.C. 3992, which prescribes the formula for the recomputation of retired pay for members advanced on the retired list, not providing a 10 percent increase in retired pay for extraordinary heroism, the member's recomputed retired pay may not be increased from the date of his advancement on the retired list to the rank of captain by 10 percent. 47 Comp. Gen. 397 (1968).

Advancement on retired list produces reduction of retired pay--When a member receives a lesser rate of retired pay in the recomputation of his retired pay, in accordance with 10 U.S.C. 3992, upon advancement to warrant officer, W-1, on the retired list after completion of 30 years of service, pursuant to 10 U.S.C. 3964, than that established under 10 U.S.C. 3991 when originally retired under the authority of 10 U.S.C. 3914 and 3961 in the grade of sergeant E-9, a higher enlisted pay grade prescribed by the act of May 20, 1958, than that of warrant officer, W-1, the member should have been consulted before advanced on the retired list, section 3964 not imposing an absolute requirement for advancement, and neither the most favorable payment formula authorized by section 3991, nor any other provision of law saving to the member the right to continue receiving retired pay under his original entitlement; therefore, the action of advancement may be rescinded on the basis of a statement by the member that it was contrary to his wishes. 44 Comp. Gen. 510 (1965).

Correction of records to show retirement subsequent advancement to officer grade--Upon correction of military records, to show retirement as a private E-1 with over 20 years of service, in lieu of discharge from the Regular Army, and advancement on the retired list to first lieutenant, the retired pay of the member for the period from date of initial retirement to date of record correction is not subject to recomputation under 10 U.S.C. 3992 at the rate "applicable on date of retirement," but at the rates prescribed in section 511 of the Career Compensation Act of 1949. 49 Comp. Gen. 440 (1970). See also 41 Comp. Gen. 399 (1961), concerning effect of court-martial sentence.

Correction of records causing retired pay to be decreased--In 1974 Army Board for Correction of Military Records changed retired officer's records in manner which required the Army Finance and Accounting Center to recompute his retired pay at lower rate retroactively reducing his retired pay entitlements and placing him in debt for overpayments received prior to 1974 board action. His 1978 application for waiver of that debt cannot be considered since it was not timely filed within 3-year period prescribed by waiver law, 10 U.S.C. 2774(b). B-197511, April 7, 1980.



B. Service Credits - Years of Creditable Active Service

Lost time

Time lost due to misconduct--Time lost by an enlisted member by reason of sickness due to misconduct (SKMC time) which was required to be made good and which is not creditable for basic pay purposes, may not be regarded as service "while on the active list or on active duty" under section 511 of the Career Compensation Act of 1949, for credit in determining the percentage multiple factor for computation of retainer and retired pay under method (b) of section 511 of the act. 39 Comp. Gen. 844 (1960).

Excused absence without leave - erroneous retirement due to miscalculation of active service--An Army enlisted member who, incident to revocation of retirement orders due to a miscalculation of active service for retirement, had a year of retirement excused as an unavoidable absence when returned to active duty to qualify for retirement may not have the excused period regarded as "absence without" or "over" leave under 37 U.S.C. 503(a), which are terms describing a situation in which the absent member is obligated to return to active duty but is prevented by a circumstance beyond his control or control of the Government and the member's ineligibility for retirement does not change the fact that he was not obligated to perform any active duty so that the excuse of absence could make the absence "active duty," and, therefore, the legality of crediting the excused period as active duty for retirement qualification is too doubtful to permit payment of retired pay. 44 Comp. Gen. 667 (1965). See also 44 Comp. Gen. 258 (1964), concerning de facto retired status resulting from miscalculation of active service and retention of retired pay.

Types of service creditable

Underage or minority enlistments--A minor's legal capacity to enter into a contract of enlistment must be determined on the basis of the law in effect at the time of his enlistment or attempted enlistment in the uniformed services, and a military status once validly attained is not affected by a change in the minimum age for enlistment; accordingly, if an enlistment contract was void due to enlistment while under the minimum age and that age was lowered or

abolished before the member reached such age, the time served after the member reached the new minimum age or from the effective date of the statute effecting the change, if the member was over the new age on such date, may be counted for retirement purposes, provided that no action was taken by the Government to avoid the enlistment contract if entered into without the written consent of the member's parent or guardian. 40 Comp. Gen. 531 (1961). See also 43 Comp. Gen. 516 (1964); 41 Comp. Gen. 238 (1961); and 38 Comp. Gen. 110 (1958).

Active service as cadet or midshipman--Active service as a "non-Naval Accademy" midshipman in the Regular Navy, by an officer retired under 10 U.S.C. 6323, may be credited to establish the percentage multiple for computing the officer's retired pay. Section 1405 prescribing but not defining "years of service," the definitions in 10 U.S.C. 101(22) and (24) are for application, the paragraphs containing no restriction as to status in which active service must have been performed in order to be creditable. 45 Comp. Gen. 363 (1965). Compare 50 Comp. Gen. 308 (1970), concerning inactive service.

Section 971 of title 10, U.S. Code, provides that cadet or midshipman service at a service academy may not be included in the computation of length of service for any purpose of an officer. 10 U.S.C. 971. However, this does not preclude the crediting of such service for the purposes of determining the eligibility of an enlisted member to retire under 10 U.S.C. 8914. Service as a cadet or midshipman at one of the academies is service in the Navy, Army or Air Force since the academies are integral parts of those services. B-195488, April 3, 1980.

Active service as participant in uniformed services University of Health Sciences--A member participating in the program at the Uniformed Services University of Health Sciences whose enrollment is terminated prior to graduation but who continues on active duty in another capacity is entitled to credit for that service in determining years of service for retired pay multiplier under 10 U.S.C. § 1405. B-195855, April 1, 1980.

Active duty after termination of military status--The active military duty performed in good faith in a de facto status that is not prohibited by law is

creditable service for basic and retired pay purposes and for determining retirement eligibility in all cases similar to that of an Air Force officer who, having been inadvertently retained on active duty for approximately 6 months after he should have been released from the temporary appointment he held when the underlying Reserve appointment on which his temporary appointment was based was terminated, is considered to have rendered service not prohibited by law in good faith and in a de facto status. 44 Comp. Gen. 277 (1964). Compare 44 Comp. Gen. 83 (1964).

Fractional year

Less than six months - day of retirement--An officer retired effective September 1, 1963, with a combined total of 21 years, 5 months and 20 days' creditable service under 10 U.S.C. 1405, in the computation of his retired pay, may not have the date his active service was terminated, August 31, 1963, included as a day of creditable service to increase his total

service to 21 years and 6 months, thereby counting his service as 22 years in determining the applicable percentage multiple. 45 Comp. Gen. 69 (1965).

More than 6 months - constructive service--The constructive service credit for minority and short-term enlistments prescribed by 10 U.S.C. 6330(d) may be counted for percentage multiple purposes in computing retired pay under 10 U.S.C. 6151(c) for members advanced on the retired list under 10 U.S.C. 6151(a) to the highest temporary officer grade satisfactorily held. 43 Comp. Gen. 826 (1964).

Awaiting call to active duty - constructive service--Member of the Commissioned Officer Corps of the Public Health Service (PHS) was appointed a Reserve officer of the PHS in 1957 and recruited by the PHS for civilian employment with the International Cooperation Administration in 1958 in contemplation of her eventual call to active duty for a long term career in the PHS Commissioned Corps. The call to active duty was delayed until 1964. In the particular circumstances presented, the last 5 years of employment prior to 1964 may be treated as "active service with the PHS" for establishing retirement eligibility under 42 U.S.C. 212. B-191501, March 8, 1979, modified. B-191501, February 19, 1980.

C. Retirement Date

Uniform retirement date act

Voluntary retirement - in general--Since voluntary retirements are not subject to the limitations of the Uniform Retirement Date Act, 5 U.S.C. 8301, retired pay entitlements thereunder are based on the monthly pay rates in effect on the first day that a member is on the retired roll. 56 Comp. Gen. 98 (1976).

Since the Uniform Retirement Date Act, 5 U.S.C. 8301, generally provides for retirements to become effective on the first day of a month, language contained in certain provisions of law authorizing the voluntary retirement of Navy, Marine Corps, and Public Health Service officials also providing for retirement on the first day of a month may be regarded as a surplusage insofar as retired pay computations under 10 U.S.C. 1401a(f) are concerned. Hence, those officers may have their retired pay computed under 10 U.S.C.

1401a(f) in the same manner as other service members, i.e., on the basis of retirement eligibility on the date immediately preceding an active duty pay rate change. B-189029, September 2, 1980.

Voluntary vs. mandatory retirement--Retired members of the Navy who if they had been involuntarily retired on July 1, 1968, would have been subject to the Uniform Retirement Date Act, but who were retired voluntarily effective that date are entitled to have their retired pay computed at the higher rates of active duty basic pay effective July 1, 1968. 48 Comp. Gen. 239 (1968). See also 44 Comp. Gen. 584 (1965); 45 Comp. Gen. 233 (1965). Compare 54 Comp. Gen. 941 (1975).

Member eligible for voluntary retirement but does not apply for it--The fact that a member had not requested voluntary retirement based on years of service when qualifying for retirement prior to July 1, 1968, does not defeat his right to retired pay computed under any "other provision of law" most favorable to him as prescribed by 10 U.S.C. 1401 when he retires on July 1, 1968. The member, therefore, is entitled to retired pay computed at the higher rate of pay made effective July 1, 1968. 49 Comp. Gen. 80 (1969).

Delivery of Orders

Late delivery--To permit payment of active duty pay and allowances to members of the uniformed services after the first of the month in which their retirement is effective until the retirement orders are actually delivered to the member, it must be shown that the member did not receive notice of his retirement orders until they were delivered; however, in cases where advance notice of retirement orders was given but such orders were not delivered and an attempt was made to revoke them--after they became effective--and replace them with orders which direct retirement at a later date, the member would have had no notice or knowledge of the lack of legal authority and his active service even after notice would be under color of authority for application of the de facto rule to permit repayment of pay and allowances collected for such period. 39 Comp. Gen. 312 (1959). Compare 56 Comp. Gen. 98 (1976); and 49 Comp. Gen. 429 (1970).

More than one application for retirement--A Marine Corps enlisted man whose third application for transfer to the Fleet Marine Corps Reserve was approved October 27, 1965, authorizing transfer effective November 30, 1965, after the first authorization was revoked, and the second order directing reinstatement of the transfer effective August 31, 1965, failed because it was never received by the commanding officer or the member must be regarded as having been effectively transferred to the Fleet Marine Corps Reserve on November 30, 1965, and, therefore, the higher rates of pay prescribed in the pay increase act effective after September 1, 1965, are for use in the computation of the member's retainer pay rather than the lower rates which were in effect prior to September 1, 1965. 45 Comp. Gen. 548 (1966).

D. Retired Pay Computation

Methods of computation

Under 10 U.S.C. 1401a(e) (1970), a member's retired pay may be computed by two methods: (1) based on the active duty pay rate in effect at the time of his retirement, and (2) based on the immediately prior active duty pay rate, plus any appropriate Consumer Price Index increases which became effective

subsequent to that active duty pay rate and before the actual date of the member's retirement; whichever method produces the greater amount of retired pay under the formulas applicable to the statute authorizing the member's retirement. 53 Comp. Gen. 698 and 701 (1974); B-179191, July 15, 1975.

In computing retired pay under 10 U.S.C. 1401a(f), the date immediately preceding an active duty basic pay rate change should generally be used as the earlier date of voluntary retirement eligibility, since this will normally result in a computation most favorable to the service member concerned. Under the Uniform Retirement Date Act, 5 U.S.C. 8301, the hypothetical earlier retirement would have become effective on the first day of the following month, but retired pay could be computed on the basis of retirement eligibility on the date immediately preceding the active duty pay rate change. B-189020, September 2, 1980.

An Army officer promoted to the grade of lieutenant general on September 1, 1975, and retired April 1, 1977, may, under 10 U.S.C. 1401a(f), have his retired pay computed as if he had retired October 1, 1975; but if the active duty basic pay increase effective that day would adversely affect his retired pay, it may be computed on the premise that he retired during September as a lieutenant general. Under 5 U.S.C. 8301, October 1, 1975, would be the retirement date, but retired pay would be computed on the basis of retirement during September 1975. B-189029, November 2, 1977.

Correction of retired pay inversion - consumer price index changes

Under 10 U.S.C. 1401a(f) (Supp. V, 1975) the retainer pay of a former Navy or Marine Corps member who initially became entitled to that pay on or after January 1, 1971, may not be less than the retainer pay to which he would be entitled if transferred to the Fleet Reserve or Fleet Marine Corps Reserve at an earlier date, adjusted to reflect applicable Consumer Price Index increases in such pay under that section even though transferred to Fleet Reserve or Fleet Marine Corps Reserve at a lower pay grade because of unsatisfactory performance of duty or as result of disciplinary action. 56 Comp. Gen. 740 (1977).

Military retired pay is adjusted to reflect changes in the Consumer Price Index rather than changes in active duty pay rates, and as a result a "retired pay inversion" problem arose: service members who remained on active duty after becoming eligible for retirement were receiving less retired pay when they eventually retired than they would have received if they had retired earlier. Subsection 1401a(f), title 10, United States Code, was adopted to alleviate that problem, and it authorizes an alternate method of calculating retired pay based not on a service member's actual retirement but rather on his earlier eligibility for retirement. B-189029, September 2, 1980.

Retention beyond mandatory retirement date

Officers whose monthly basic pay increased while they were held on active duty beyond mandatory retirement for physical evaluation purposes are entitled to the computation of disability retired pay at the higher basic pay in effect on dates of retirement and to an adjustment for the underpayments that resulted because retired pay had been computed at the lower rates in effect on their mandatory retirement dates, and they also may have credit for the additional active duty for longevity purposes. 53 Comp. Gen. 135 (1973). See also 53 Comp. Gen. 610 (1974); and 53 Comp. Gen. 94 (1973).

Retention of good conduct increases for Coast Guard members

The provision authorizing a 10 percent "good conduct" increase added to retired pay of enlisted members of the Coast Guard who retire from the Coast Guard after 20 years' service was repealed by Public Law 88-114 except that a saving provision retained the 10 percent increase for those on active duty with the Coast Guard on September 6, 1963. The saving provision is construed, in view of its purpose, to include members who were in another branch of the armed services on September 6, 1963, or who were not in any armed service on that date, as long as they were on active duty with the Coast Guard prior to September 6, 1963, or who were not in any armed service on that date, as long as they were on active duty with the Coast Guard prior to September 6, 1963, subsequently obtained eligibility for retirement from the Coast Guard as enlisted members and retired with the requisite good conduct marks. B-193199, April 11, 1979.

III. RETIREMENT FOR NONREGULAR SERVICE

A. Eligibility

Qualifying service

Last 8 years of qualifying service not in Reserve component--The notice to a reservist under 10 U.S.C. 1331(d) of his eligibility to retire pursuant to chapter 67 of title 10, U.S. Code, upon discovery that although the member meets the 20 years' service requirement of 1331(a)(2), he does not satisfy section 1331(a)(3) to the effect the last 8 years of qualifying service must have been as a member of a Reserve component or the war service requirement of section 1331(c), and that he is excluded from the chapter by section 1331(a)(4) because he is entitled to retired pay under "another provision of law," serves to validate only the service eligibility requirements of clauses (2) and (3) of 10 U.S.C. 1331(a) since for the purpose of 10 U.S.C. 1406, limiting the revocation of retired pay because of error in determining years of service under section 1331(a)(2), both clauses must be read together, whereas section 1406 does not affect the prohibitions in sections 1331(a)(4) and 1331(c). 51 Comp. Gen. 91 (1971).

Service in Regular component after completion of qualifying 20 years' service--For members of the Regular components who have 20 years of satisfactory Federal service as defined in 10 U.S.C. 1332 and would otherwise be qualified for retirement for physical disability except that their disability was less than 30 percent, to be eligible under 10 U.S.C. 1209 for transfer to the inactive status list and to receive retired pay computed under Chapter 71 of title 10 of the U.S. Code upon becoming 60 years of age, such members must have met all the requirements, except age, imposed under the voluntary retirement provisions in Chapter 67, including completion of 20 years of satisfactory service as defined in 10 U.S.C. 1332, the last 8 years of which were in a Reserve component, as required under 10 U.S.C. 1331; however, Regular Army service which follows completion of all of the service requirements in 10 U.S.C. 1331 would not deprive a Regular member of eligibility for Chapter 71 retirement benefits. 39 Comp. Gen. 801 (1960).

Not qualified for retirement under other law

Member eligible for disability retirement--An officer who prior to reaching 60 years of age and qualifying for retirement under 10 U.S.C. 1331 was transferred to the Retired Reserve with over 30 years of service under 10 U.S.C. 1333 and continued on active duty under a temporary appointment in the same grade until meeting the age requirement of section 1331, when he was retired for physical disability pursuant

simultaneously. 47 Comp. Gen. 654 (1968). See also 41 Comp. Gen. 118 (1961); B-163446, March 8, 1977.

V. CHARACTERISTICS OF RETIRED PAY

Advance Payment of Retired Pay

Retired pay is included within the definition of pay in 37 U.S.C. 101(21). Therefore, authority in 37 U.S.C. 1006(h) to make payments up to 3 days in advance of a regular payday, of pay and allowances to individuals under the jurisdiction of the Secretaries of the military departments includes payments of retired pay. B-193772, January 22, 1980.

Waiver of Retired Pay

Writ of garnishment of member's retired pay, issued pursuant to 42 U.S.C. § 659, must be honored even though member has renounced his retired pay and it is not being sent to him by the Government since he may not waive his right to such pay which continues to accrue even though it is not being sent to him by the Government. B-196839, April 24, 1980.

A retired Air Force flight officer waived receipt of retired pay in 1950 in order to receive VA compensation, which was at that time greater than his retired pay. Through administrative error his retired pay account was never adjusted when statutory increases in retired pay caused it to be greater than VA compensation. On question as to whether waiver is a forfeiture of the right to further retired pay, 38 U.S.C. 26c (1946 ed.) authorized a person to waive a portion of retired pay equal to the VA payment. That statute applied to this member. Thus, regardless of the language of the waiver, conditional waiver is not authorized and member may not be denied portion of retired pay which exceeds VA entitlement. 28 Comp. Gen. 484 (1949) and B-197603, August 21, 1980.

Retroactive Payments

Payment of retired pay entitlements retroactively is subject to the 6-year statutory period from the date a claim for such pay bearing the claimant's, or his authorized agent's or attorney's signature, is received in the General Accounting Office. 31 U.S.C. 71a. A voucher submitted to the General Accounting Office by an Air Force Finance Officer without the

appropriate signature of the claimant or his knowledge
is not a claim for the purposes of 31 U.S.C. 71a.
Payment may be made only for the period of 6 years
before the date of payment. B-197603, August 21,
1980.

Temporary employment

Pre-1964 employment - 30-day exemption inception--
When a retired Regular officer is employed temporarily before December 1, 1964, the effective date of the Dual Compensation Act of 1964, and the employment extends beyond that date, the beginning date for the computation of the first 30-day exemption period of employment provided under section 201(c) of the act from reduction in retired or retirement pay applies to the first 30 days for which the employee receives salary after November 30, 1964. 44 Comp. Gen. 266 (1964).

Two temporary appointments - 30 day exemption--
A retired Regular officer is employed by a Member of Congress under two temporary appointments not in same fiscal year is entitled to an exemption from a reduction in retired pay for the first 30-day period for which he receives a salary under each temporary, part-time, or intermittent appointment, when the appointments are not made during the same fiscal year. 45 Comp. Gen. 559 (1966).

D. Pay Reduction and Refunds

Reduction formulas

CPI Base Figure--Section 5532(b) of title 5, United States Code, which prescribes that the percentage increases to reflect changes in the Consumer Price Index shall apply to the \$2,000 of retired pay not subject to reduction contemplates only one base figure for any given period to which cost of living percentage increases will apply cumulatively, thus, the 3.7 percent increase effective December 1, 1966, establishes the new basic figure of \$2,074 as the amount of retired pay exempted from reduction. Therefore, 45 Comp. Gen. 164, is overruled. 46 Comp. Gen. 549 (1966).

Economy Act Repeal - dollar limitation--A retired Regular officer who earns a combination of annual civilian and retired pay in excess of the \$10,000 limitation prescribed in the Economy Act of 1932, prior to the effective date of the Dual Compensation Act of 1964, is subject to an appropriate reduction in his retired pay for the period January 1 to November 30, 1964. Since it is impossible to give literal effect to the rule in several Court of Claims cases

Leave credit limitation--If the retired officer elects a lump-sum leave payment, should he return to his civilian position prior to the expiration of the period covered by the payment, he will be subject to the same adjustment required in the case of reemployment following a separation--the refund of an amount equal to the unexpired period. 49 Comp. Gen. 444 (1970).

Retired pay reduction - 1 hour civilian pay-- Notwithstanding that a retired Regular officer is employed by a nonappropriated fund instrumentality only intermittently as a flight instructor on an hourly basis with no guaranteed minimum, he is subject to 5 U.S.C. 5532, requiring the reduction of a full day's retired pay if the officer receives any compensation for that day, even as little as pay for 1 hour as a flight instructor, for absent recognition of fractional parts of a day's retired pay, such pay may not be equated with hours of work in a position for which an officer is paid a salary for less than a full day. 47 Comp. Gen. 185 (1967).

Retired pay reduction - State community property law--The Dual Compensation Provisions in 5 U.S.C. 5532, reduce the retired pay entitlements of retired officers of Regular components who are employed in civilian positions with the Federal Government. The fact that under a State community property law the spouse of the retiree is considered to be entitled to part of the retired pay does not permit that part of the member's retired pay to be excluded from dual compensation reduction since Federal law controls payment of such pay. E-196823/B-183828 May 20, 1980, 59 Comp. Gen. ____ (1980).

Reduction not required--Although the civilian position held by a retired Regular officer in a nonappropriated fund activity is a position subject to the reduction of retired pay prescribed by 5 U.S.C. 5532(b), a reduction is not required in the officer's retired pay where the reduction would exceed the amount the officer receives from his civilian employment. 50 Comp. Gen. 604 (1971).

Dual Office Act of 1894 - violation

Refund of compensation--A Regular member of the uniformed services retired as a temporary warrant officer and employed as a civilian who at the time of filing notice of election under the Dual Compensation Act of 1964, is discovered to have been appointed in contravention of the prohibition in section 2 of the dual office act of 1894, is not entitled to retain the compensation received for services performed under the illegal civilian appointment prior to December 1, 1964, the effective date of the repeal of section 2 of the 1894 act by the 1964 act. 45 Comp. Gen. 330 (1965).

Pre-1964 limitation of refund--When the civilian appointment of a retired officer is found to have violated the prohibition in section 2 of the dual office act of 1894, the appointment having been made prior to the repeal of the section by the Dual Compensation Act of 1964, the compensation received prior to December 1, 1964, is required to be refunded. 45 Comp. Gen. 330 (1965).

Retroactive exemption by Private Relief Bill--Legislation enacted to relieve an employee of liability to repay compensation received prior to December 1, 1964, under an appointment that contravened the prohibition in section 2 of the dual office act of 1894, repealed by the Dual Compensation Act, would not have the effect of retroactively exempting the employee from the restriction in section 2, or otherwise validating the appointment. 45 Comp. Gen. 330 (1965).

II. CONSTITUTIONAL PROHIBITION

A. Foreign Employment

Direct Government employment

Salary as an emolument--The payment of a salary for employment by a foreign government is an "emolument"

from a "foreign state," the acceptance of which by one who holds an office of profit or trust under the United States is prohibited under the Constitution without the consent of Congress. B-154213, December 28, 1964.

Retired pay to be withheld in amount equal to emoluments from foreign government--Retired Regular members prohibited under the Constitution from employment by a foreign government without congressional consent are subject to withholding of their retired pay in an amount equal to the amounts received from the foreign government. What constitutes amounts received in employment by that government must be given its broadest possible scope and application in determining the amount which is subject to withholding. When the retired pay exceeds the amount received from this employment, only the amount received from the foreign government should be withheld from the member's retired pay. B-178538, October 13, 1977.

No specific sanction is authorized in section 509 of the Foreign Relations Authorization Act for Fiscal Year 1978 with respect to a retired member who accepts employment and compensation therefor from a foreign government without the approval. However, substantial effect is given to the prohibition in Article I, section 9, clause 8 of the Constitution by withholding a member's retired pay in an amount equal to that received from the foreign government. This is based on the view that the emoluments received by the retired member are received on behalf of the United States. B-193562, December 4, 1979.

Public Law 95-105 granting consent of Congress to foreign employment--Consent of Congress to acceptance of foreign civil employment by officers of the United States required by the Constitution cannot be retroactively applied to the retirement pay withheld from an officer for a period he was employed by a foreign state without such consent which occurred prior to the effective date of the Act. Such consent conditioned upon the approval of the Secretary of State and the Secretary of the service concerned is only effective prospectively from the date granted and may not be made retroactively to authorize employment and compensation received before the approval is granted. 58 Comp. Gen. 487 (1979). See also B-175166, April 7, 1978.

Based upon the history of section 509 of the Foreign Relations Authorization Act for Fiscal Year 1978 an individual who was employed by a foreign government when that provision was enacted is not required to refund amounts paid him by the foreign government once approval to accept employment and compensation from the foreign government is given under that section. A member's monthly retired pay may be reinstated. This is the case even though amounts of retired pay previously withheld from the member do not equal that received from the foreign government, since Congress intended that retired pay of these retirees be resumed on approval. B-193562, December 4, 1979.

Congressional consent required by Article I, section 9, clause 8 of the Constitution for a retired Regular officer of a uniformed service of the United States to accept employment and compensation therefor from a foreign government was granted by Public Law 95-105, subject to approval of the employment by the Secretary concerned and the Secretary of State. This approval authority operates only prospectively. Thus, a retired Regular officer accepting employment with a foreign government prior to receiving approval of both Secretaries is subject, in accordance with 58 Comp. Gen. 487 (1979), to collection from his retired pay of amounts received from the foreign employment for the period of employment prior to the approval being granted. B-198557, July 17, 1980.

"Emoluments" given broad interpretation--The prohibition against receipt of emoluments "of any kind whatsoever" from a foreign government by a retired member of the uniformed services includes forms of compensation other than salary, such as free transportation, household goods shipments, housing allowance, etc., which should be fairly valued considering the actual value of the emolument received. 58 Comp. Gen. 487 (1979).

Reserve members--The authority for Armed Forces Reserve members, active or retired, to be employed by foreign governments and instrumentalities of foreign governments when approved by the Secretary concerned is 10 U.S.C. 1032, enacted to overcome the constitutional prohibition against acceptance of foreign emoluments by persons holding offices under the United States. 41 Comp. Gen. 715 (1962).

Regular vs. Reserve status--A Regular Air Force enlisted member, retired for years of service and who becomes a member of the United States Air Force Reserve (inactive) on retirement, does not lose his "Regular" status, since it is the law under which retired which determines a member's status on the retired list, therefore, he holds an "Office" within the meaning of the constitutional prohibition against employment by a foreign government. B-159945, January 30, 1967.

Foreign Government subdivision--A retired Regular enlisted member of the Coast Guard employed as a teacher by the State of Tasmania, Australia, is regarded as holding an "office of profit and trust" after retirement as those terms are used in the United States Constitution, so that the acceptance of salary for employment with the State of Tasmania, which is considered a "foreign state" comes within the constitutional prohibition. 44 Comp. Gen. 130 (1964).

Fleet Reserve--Since an enlisted member of the Navy who is transferred to the Fleet Reserve and receives retainer pay continues to be subject to call to active duty, a Fleet reservist who accepts employment with a foreign government, without the consent of Congress, must be regarded as holding an "office" within the

CHAPTER 9

SURVIVOR BENEFIT PLAN (SBP)

I. LAW GENERALLY

The Survivor Benefit Plan, 10 U.S.C. 1447-1455, enacted by Public Law 92-425, approved September 21, 1972, 86 Stat. 706, has been amended by section 804 of Public Law 93-155, approved November 16, 1973, 87 Stat. 605, 615; Public Law 94-496, approved October 14, 1976, 90 Stat. 2375; and Title II of Public Law 95-397, approved September 30, 1978, 92 Stat. 843.

II. COVERAGE GENERALLY

A. Beneficiaries

Children coverage

Election requirement--When an eligible widow with dependent children is receiving an annuity under 10 U.S.C. 1448(a) which is reduced under 10 U.S.C. 1450(c) because of DIC entitlement and the widow loses eligibility because of death or remarriage dependent child is not entitled to an annuity unless coverage is elected and the additional costs for such coverage assessed. 54 Comp. Gen. 709 (1975).

Dependency and Indemnity Compensation (DIC) effect--Where children coverage is elected, the dependent children are entitled to the full annuity selected even though the annuity of the surviving spouse had been permanently reduced by the amount of DIC received. 55 Comp. Gen. 1409 (1976).

Foster child--A minor grandchild of a service member can qualify as a foster child, subject to support requirement and limitations on dependency contained in 10 U.S.C. 1447(5) (A) and (B). 53 Comp. Gen. 461 (1974).

Military personnel-status--A child under 18 years of age and serving on active duty, or under 22 and attending a service academy, or enrolled in an institute of higher learning under a military subsistence scholarship program, is considered an eligible dependent within the meaning of 10 U.S.C. 1447(5), even though he is provided quarters and subsistence by the Government. 53 Comp. Gen. 420 (1973).

Spouse coverage

Eligible spouse beneficiary defined--The meaning of the phrase "eligible spouse beneficiary" as used in 10 U.S.C. 1452(a), as amended by section 1(5)(A)(ii) of Public Law 94-496, is to be defined in terms of the definition of "widow" or "widower" contained in 10 U.S.C. 1447; that is, in order for a widow or widower to receive a survivor annuity on the death of the member in retirement, they must be an eligible spouse beneficiary immediately before the death. 56 Comp. Gen. 1022 (1977).

Undissolved First Marriage-Status--Where member marries a second wife without dissolving his first marriage, second wife is not legally married to him and does not qualify as the beneficiary of his (SBP) annuity. Since the first wife was legally married to him at the time of his death, she is his "widow" and is the proper beneficiary of the SBP annuity in spite of the second ceremonial marriage. B-194469, May 14, 1979. Compare B-195250, January 23, 1980.

Active duty marriages--When a member remarries while serving on active duty and elects coverage for his newly acquired spouse, upon his death while in retirement, his spouse is fully qualified as an eligible widow under 10 U.S.C. 1450(a)(1) since the marriage limitation contained in 10 U.S.C. 1447(3)(A) applies only to post-retirement marriages. 53 Comp. Gen. 470 (1974).

Death on active duty--In the event a member dies while serving on active duty, under 10 U.S.C. 1448(d) his widow is automatically entitled to an annuity regardless of the length of the marriage prior to the member's death. 53 Comp. Gen. 470 (1974).

Length of marriage qualification--Where member marries his second wife prior to validly divorcing his first wife and his marriage to his first wife was not dissolved until 8 months before his death, his second wife did not qualify as his "widow" under 10 U.S.C. 1447(3)(A) as she had not been legally married to him at the time he became eligible for retired pay and had not been married to him for at least 1 year immediately before his death. B-189133, September 21, 1977.

C. Administrative Requirements

Detailed explanation

The legislative history of the SBP discloses that administrative officers are required to fully explain the details and benefits of the Plan to retiring personnel and their spouses if full coverage not selected; a responsibility that implies the requirement to determine whether there is an eligible spouse or dependent child. 53 Comp. Gen. 192 (1973).

Records examination

Where a member states that he does not have a spouse or child eligible for an annuity, the service records of the member should be examined to verify that representation. If there is no contrary evidence, the member's election may be accepted. 53 Comp. Gen. 192 (1973).

Good acquittance

Where member's representations that he has no spouse or dependent child are supportable in service records and his election not to participate in SBP is accepted, the Government has a good acquittance should it be posthumously discovered that the member had an eligible spouse or child at the time of retirement. 53 Comp. Gen. 192 (1973).

TDRL removal

When a service member's name is removed from the TDRL and is returned to the active list for any purpose, he is to be treated thereafter as a new prospective SBP participant and given the opportunity to review his future participation prior to retirement with positive action taken administratively to insure that the details and costs are again fully understood by him. 53 Comp. Gen. 971 (1974).

Secretarial election - incompetents

An election on behalf of a mentally incompetent member for natural person may be made by the Secretary concerned standing in place of the incompetent and under 10 U.S.C. 1449, if, after careful consideration of the facts and circumstances, he believes that the retiree would give up a substantial amount of monthly

pay, he is required to make the election. 52 Comp. Gen. 973 (1973).

D. Retired Pay Reductions

Inception

Non-Regular Retirees--Since 10 U.S.C. 1448(a) provides that coverage commences when individual becomes entitled to retired pay, persons retired under 10 U.S.C. 1331, who become entitled to retired pay when application for retired pay is filed with department concerned, receive coverage at that time and deductions from retired pay commence with the inception of coverage. 53 Comp. Gen. 832 (1974).

Fleet Marine Corps Reserve

If an active duty member is placed in retired or retainer pay status effective a day other than the first of a month and participates in the SBP, coverage charges begin on the first day of month following, unless regulations pursuant to 10 U.S.C. 1455 provide pro rata charges for part of month. B-196539, July 1, 1980.

Termination

Spouse coverage--Under the SBP, as amended by section 1(5)(A)(ii) of Public Law 94-496, effective October 1, 1976, where a member had elected spouse coverage but reduction of retired pay for spouse coverage is terminated because the member no longer has an eligible spouse beneficiary, so long as he had an eligible spouse beneficiary on the first day of the month, full reduction of retired pay for spouse coverage is required since charges are made on an indivisible monthly basis. 57 Comp. Gen. 847 (1977). See also B-195349, January 10, 1980. Cf. B-196539, July 1, 1980.

Foreign Service Survivor Annuity Elections--A retired service member who validly elects into the SBP may not voluntarily withdraw and shall continue to have his retired pay reduced (10 U.S.C. 1452(a)) or make deposits for coverage (10 U.S.C. 1451(d)), if not entitled to retired pay, notwithstanding fact that member was subsequently employed in the Foreign Service, retired therefrom and elected a survivor annuity under that system. B-188932, December 22, 1977.

Civil Service Survivor Annuity Elections--A retired member, having elected coverage under the SBP, and thereafter retired from the Civil Service, waived receipt of military retired pay for Civil Service retirement purposes and did not decline survivor coverage under the Civil Service Retirement system. Under 10 U.S.C. 1452(e), SBP coverage charges are suspended so long as that waiver is in effect. B-192490, January 3, 1978.



Resumption

Post-election remarriages--Since section 1(5(A)(ii) of Public Law 94-496 authorizes that reduction in retired pay for spouse coverage purposes is no longer required for any month in which there is no eligible spouse beneficiary, resumption of such reduction for spouse coverage in the case of post-election remarriages would not occur until the spouse on remarriage qualifies as an eligible spouse beneficiary by the happening of the earlier of the two requirements stipulated in 1447(3)(A) and (B). 56 Comp. Gen. 1022 (1977). See also B-195349, January 10, 1980.

Spouse coverage - first month following eligibility attainment--Under the SBP, as amended by Public Law 94-496, effective October 1, 1976, after spouse coverage is terminated due to loss of eligible spouse beneficiary and the member remarries, since reduction in retired pay for spouse coverage purposes is charged on an indivisible monthly basis, such reduction in retired pay would not resume until the first month following the date such spouse attains eligible spouse beneficiary status, unless such date is on the first of a month, then appropriate charges are to be made for that month. 57 Comp. Gen. 847 (1978). See also B-195349, January 10, 1980.

Recomputation

Child coverage - loss of spouse beneficiary--Under the SBP, as amended by Public Law 94-496, effective October 1, 1976, where the member had elected both spouse and children coverage and there is termination of reduction of retired pay for spouse coverage because of loss of an eligible spouse beneficiary, the previously elected child coverage is to be recomputed since the law governing the SBP requires such coverage to be determined on an actuarial basis and the loss of the eligible spouse beneficiary has increased the probability that an annuity would be payable to an elected dependent child. 57 Comp. Gen. 847 (1978).

Member's and child's age--Under the SBP, as amended by Public Law 94-496, effective October 1, 1976, since dependent children coverage, either alone or in combination with spouse coverage is to be determined on actuarial basis, in order to maintain such basis, recomputation of children coverage is to be based on

the member's age and that of the youngest child beneficiary as of the day following loss of an eligible spouse beneficiary. 57 Comp. Gen. 847 (1978).

Eligible spouse beneficiary reacquisition--Under the SBP, as amended by Public Law 94-496, effective October 1, 1976, where the cost of children coverage had been recomputed and charged following the loss of eligible spouse beneficiary, since children coverage is to remain on an actuarial basis, and since the gain of an eligible spouse beneficiary has reduced the probability that an annuity would be payable to an elected dependent child, the cost of such coverage should be further recomputed, based on the age of the youngest child and the ages of the member and remarriage spouse on the date the spouse qualified as an eligible spouse beneficiary. 57 Comp. Gen. 847 (1978). See also B-195349, January 10, 1980.

E. Record Correction

Persons whose military record is corrected on date subsequent to September 20, 1972, to show entitlement to retired or retainer pay commencing subsequent to that date are automatically covered and may not be afforded a period of time thereafter to decline coverage or elect reduced coverage after award of retired pay, since their position cannot be distinguished from member becoming entitled to retired or retainer pay without correction of their record and do not receive opportunity to elect reduced coverage or decline coverage after they become entitled to that pay. 54 Comp. Gen. 116 (1974).

III. ANNUITIES

A. Member Death on Active Duty

No break in service

Annuity payment limitation--Service member, retired after passage of SBP, is immediately recalled to active duty and then dies while on that duty. Entitlement to annuity accrues only under the provisions of 10 U.S.C. 1448(d), 53 Comp. Gen. 847 (1974), affirmed B-179018, August 6, 1976.

Spouse annuity--Where entitlement accrues under 10 U.S.C. 1448(d) as the only basis for coverage, only the otherwise eligible surviving spouse would be entitled to an annuity. 53 Comp. Gen. 847 (1974).

Child annuity--A dependent child is not entitled to an annuity under 10 U.S.C. 1448(d) since the legislative history of the SBP indicates such coverage was not intended. 54 Comp. Gen. 709 (1975).

Break in service

Alternative annuity--Where a retired member who has elected SBP spouse coverage, is recalled to active duty after a break in service and dies while serving on that duty, the surviving spouse is eligible to receive the elected annuity under 10 U.S.C. 1448(a) or the annuity authorized under 10 U.S.C. 1448(d), whichever provides the greater benefit. 53 Comp. Gen. 847 (1974).

Dependent child entitlement--Service member who elects coverage for spouse and children, is retired and recalled to active duty after a break in service and dies while serving on that duty, upon the death of the spouse who was receiving annuity under 10 U.S.C. 1448(d) the children would have a right under 10 U.S.C. 1448(a) to receive the annuity elected for the remainder of their dependency. 53 Comp. Gen. 847 (1974).

B. Qualifying Service Time

Missing in action (MIA) status

Active duty personnel who enter an MIA status and are subsequently determined to have died in that status, since time in an MIA status is treated as active service for pay, allowances and other benefits, such time shall count towards retirement years of service for the purpose of establishing an annuity under 10 U.S.C. 1448(d). 53 Comp. Gen. 887 (1974).

Promotion in a missing in action (MIA) status

Limitations on grade for retirement purposes, such as the six-month in grade requirement, do not apply to promotions in cases of members who are in an MIA status and have been determined to be killed in action since under 37 U.S.C. 552(a), such promotions received are "fully effective for all purposes." B-195625, February 28, 1980.

Retirement qualification

An annuity is not payable under 10 U.S.C. 1448(d) in case of commissioned officer with over 20 years'

service when he died on active duty, since he was not eligible for retirement under 10 U.S.C. 8911 (1970) because he had less than 10 years of service as a commissioned officer and was not eligible for retirement under 10 U.S.C. 8914 (1970) as an enlisted member since at the date of his death he was an officer. 55 Comp. Gen. 854 (1976).

C. Computation of Retired Pay

10 U.S.C. 1402(a) or (e)

Service member with over 20 years of service who is retired, immediately recalled to active duty and dies while on such duty, for purposes of determining annuity authorized by 10 U.S.C. 1448(d), retired pay is computed under 10 U.S.C. 1402(a) or (e) to reflect later active duty. B-179018, August 6, 1976.

Rates on TDRL

Member whose grade was rear admiral (08) and who was serving as an admiral (0-10) when transferred to the TDRL and died while thereon before the Senate could confirm him as an admiral (0-10), regardless of grade to which entitled on the retired list, under Formula No. 2, 10 U.S.C. 1401, such member's retired pay while on the TDRL is computed on basic pay of an admiral (0-10) and SBP annuity based thereon. 55 Comp. Gen. 667 (1976).

Promotions in a missing in action (MIA) status

Limitations on grade for retirement purposes, such as the six-month in grade requirement, do not apply to promotions in cases of members who are in an MIA status and have been determined to be killed in action since under 37 U.S.C. 552(a), such promotions received are "fully effective for all purposes." B-195625, February 28, 1980.

D. Annuity Inception Date

MIA Members

The inception date for payment of an annuity under 10 U.S.C. 1450 for MIA members is the day after the date the Secretary concerned makes a determination of death as long as such date of determination occurs after September 21, 1972, notwithstanding the fact that the date of death is determined to have occurred

earlier than the date of determination. 53 Comp. Gen. 887 (1974).

Successive child benefits

When a member elects coverage under the SBP for his spouse and child, the child may not receive the annuity until the widow or widower dies or remarries prior to age 60, even though she is not receiving SBP benefits pursuant to 10 U.S.C. 1450(c) as a result of her entitlement to DIC. B-191524, June 30, 1978.

IV. ANNUITY ADJUSTMENTS

A. Dependency and Indemnity Compensation

SBP reduction

Cost computation--Where widow's SBP annuity is reduced pursuant to 10 U.S.C. 1450(c) by the award of DIC, in order to determine amount of refund due pursuant to 10 U.S.C. 1450(e), computation of cost of reduced annuity is to be made on a monthly basis and include all cost-of-living increases in retired pay and all increases in DIC rates from the date of member's retirement until the date of his death. 56 Comp. Gen. 482 (1977). See also 57 Comp. Gen. 847 (1977).

Spouse coverage only--Widow is entitled to refund of deductions from retired pay if the annuity is reduced based upon receipt of DIC, however, such refund is only computed on retired pay reductions for spouse coverage and does not include retired pay deductions for dependent children coverage. 55 Comp. Gen. 1409 (1976).

Limitation on refund--Where the surviving spouse receives the full amount of selected SBP annuity for any period, because an award of DIC could not be made retroactive to date of death since recalculation of SBP annuity pursuant to 10 U.S.C. 1450(c) and (e) is permitted only when annuity is reduced by DIC award effective "upon the death" of the retiree, no refund is due. 56 Comp. Gen. 482 (1977).

Loss of DIC

SBP reinstatement--Where annuity is either terminated or reduced in accordance with 10 U.S.C. 1450(c) and (e) because of receipt of DIC, and spouse subsequently loses eligibility for DIC because of remarriage after age 60, such spouse would only be entitled to reinstatement of the annuity paid for and not refunded. 54 Comp. Gen. 838 (1975). But see 10 U.S.C. 1450(k) as added by section 203 of Public Law 95-397, for annuities payable on and after October 1, 1978. See also 58 Comp. Gen. 626 (1979).

SBP increase--Where reductions from retired pay are refunded pursuant to 10 U.S.C. 1450(e) because spouse is receiving DIC, repayment of that refund for the purpose of acquiring increased SBP coverage when DIC is lost due to remarriage after age 60 was not authorized. 54 Comp. Gen. 838 (1975). However, pursuant to 10 U.S.C. 1450(k) as added by section 203 of Public Law 95-397, the full SBP annuity may now be

child under 10 U.S.C. 1450(a)(2). B-191524, June 30, 1978.

SBP prohibition--Where a surviving spouse is eligible for an annuity under 10 U.S.C. 1448(d), such language contained therein which relates to the eligibility to receive DIC payments, when considered in conjunction with the other portions of subsection (d), must be construed only as prohibiting an SBP annuity if the VA benefits exceed the maximum annuity otherwise payable under 10 U.S.C. 1448(d). 53 Comp. Gen. 847 (1974).

B. Civil Service Survivor Annuity

SBP annuity when retired pay waived

SBP annuity elected by retiree, who later waives military retired pay for use of military credits to increase his Civil Service retirement benefits, is not payable unless retiree elects not to participate in Civil Service retirement survivorship plan. 53 Comp. Gen. 957 (1974).

SBP participation suspension

SBP participation is suspended during period that a member has in effect a waiver of military retired pay for Civil Service annuity purposes based on combining military service with Civil Service, but if waiver is no longer effective, previously elected SBP would be resumed and military retired pay reduced thereafter. 55 Comp. Gen. 1178 (1976). Cf. B-192470, January 3, 1979, and B-192470, January 24, 1980.

Reduced civil service annuity

A member who elects SBP coverage and who later elects to combine military service credits with Civil Service credits for Civil Service annuity purposes, may elect to participate in the Civil Service survivorship plan at a level lower than his SBP coverage. 55 Comp. Gen. 1178 (1976).

Refund of costs

Where member who elected SBP coverage waived retired pay to receive VA compensation, but informed Civil Service Commission that purpose of waiver was to have Civil Service annuity computed on basis of total

Federal service, even though service Finance Center was not so advised until after member's death, his widow is not eligible for SBP annuity, however, she is entitled to refund of costs paid by member after waiver. 55 Comp. Gen. 684 (1976).

SBP deposits not required

Deposits are not required to be made under SBP by retiree who elects to use military credits to increase Civil Service retirement benefits unless retiree elects not to participate in Civil Service retirement survivorship plan. 53 Comp. Gen. 857 (1974). See B-192470, January 3, 1978, and B-192470, January 24, 1980. Cf. B-188932, December 22, 1977.

Previous waiver

An election by a retiree to participate in the SBP and cancel his RSFPP coverage, is of no force or effect in view of the limitation contained in 10 U.S.C. 1450(d), where he has previously waived his retired pay in order to increase his Civil Service annuity and has survivor annuity coverage under the program, and the widow of such a member is to have her RSFPP coverage reinstated. B-183374, June 4, 1975.

C. Foreign Service Survivor Annuity

SBP nontermination

A surviving spouse of retired military member, who validly elected into the SBP to provide spouse coverage and who later retired from the Foreign Service having validly elected spouse coverage under that retirement system, is entitled to payment of the elected SBP annuity as well as the Foreign Service survivor annuity. See B-188932, December 22, 1977.

D. Social Security Setoff

Military service only

Setoff of amount from annuity representing social security benefit payable to widow at age 62 and widow with one dependent child must be calculated on the basis of wages attributable to member's military service only and the formula used to calculate wages attributable to the military service may not include

wages from nonmilitary employment. 53 Comp. Gen. 733 (1974). See also 58 Comp. Gen. 795 (1979) and B-196569, July 8, 1980.

Widow's vs. widower's benefit

For purposes of social security setoff widower's benefit is not subject to same reduction as widow's benefit when there is one dependent child since widower receives no benefit comparable to "mothers benefit" under social security laws. 53 Comp. Gen. 758 (1974).

E. Cost of Living Adjustments

Less than maximum coverage

Base amounts designated less than maximum coverage are not subject to modified cost-of-living adjustments to retired pay computation at time of retirement. 55 Comp. Gen. 1432 (1976). See also B-190908, April 26, 1978, and June 26, 1980.

Maximum coverage

All base amounts designated under 10 U.S.C. 1447(2) upon which SBP annuities are based are subject to cost-of-living adjustments under 10 U.S.C. 1401a(b). 55 Comp. Gen. 1432 (1976).

F. Remarriages

Annulment

Where a surviving spouse beneficiary loses annuity entitlement because of subsequent remarriage, but where that remarriage is annulled, annuity payments may be reinstated effective the first day of the month in which annulment decree was rendered. B-197602, September 12, 1980.

V. PRE-EFFECTIVE DATE RETIREES

A. Spouse Coverage

Newly acquired - limitation

Member who was retired prior to the effective date of the SBP and who marries prior to the first anniversary of the Plan (September 21, 1973), may

provide immediate coverage for his spouse regardless of the 2-year limitation under 10 U.S.C. 1447(a)(A), provided such an election is made within the time limitation stated in subsection 3(b) of the act, as amended by section 804 of Public Law 93-155. 54 Comp. Gen. 266 (1974). See also B-190908, April 26, 1978, and B-190908, June 26, 1980.

Expansion of coverage to include

Spouse of member retired prior to effective date of the SBP, who had divorced member prior to SBP effective date, but who had remarried member within time limit imposed under subsection 3(b) of Public Law 92-425, as amended, and where retired member, as a single person had previously elected SBP coverage for dependent child, such spouse immediately qualifies as an eligible surviving spouse if he elected to expand that coverage to include such spouse within the time limitation referenced in the fourth sentence of 10 U.S.C. 1448(a). 54 Comp. Gen. 732 (1975).

B. Children Coverage - Selection Time Limitation

Service member who was married, had a dependent child and retired prior to effective date of SBP, who was subsequently divorced prior to March 21, 1974 (anniversary of effective date of Plan as extended by section 804 of Public Law 93-155), and who did not elect children coverage within 18-month time limitation stated in subsection 3(b) of act, is not eligible to elect children coverage thereafter in absence of further legislation reopening Plan to him. B-187179, November 30, 1976. See also 56 Comp. Gen. 1022 (1977).

C. Elections

Timeliness

A member retired prior to the effective date of SBP, who executed a section 3(b) election to provide spouse coverage before anniversary date but died prior to the receipt of the election in the administrative office, made a valid election, where the election document had been witnessed and passed from his control prior to death, since section 3(e) requires only that an election timely made is effective when received by the Secretary concerned. 53 Comp. Gen. 519 (1974).

Full participation

Member, retired prior to effective date of SBP, who as single person elects coverage for dependent child through subsection 3(b) of that act, at that point participation in Plan to the same degree as post-effective date retirees and subject to the post-participation election restrictions contained in 10 U.S.C. 1448(a). 54 Comp. Gen. 732 (1975).

Fourth sentence of 10 U.S.C. 1448(a) elections--
A pre-SBP effective date retiree who is unmarried with a dependent child on the first anniversary

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